

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 150

THE ASSOCIATED PRESS, PETITIONER,

vs.

EDWIN A. WALKER.

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**IN THE 17TH JUDICIAL DISTRICT COURT
IN AND FOR TARRANT COUNTY, TEXAS**

No. 31741-C

EDWIN A. WALKER

v.

**AMON G. CARTER, JR.; CARTER PUBLICATIONS, INC.; FORT
WORTH STAR TELEGRAM; WBAP RADIO; WBAP TELEVI-
SION; and ASSOCIATED PRESS**

PLAINTIFF'S ORIGINAL PETITION—Filed September 27, 1963
To the Honorable Judge of Said Court:

Now comes Edwin A. Walker, Plaintiff in the above styled and numbered cause and files this his Original Petition complaining of Amon G. Carter, Jr., as publisher of the Fort Worth Star Telegram, d/b/a Fort Worth Star Telegram; Carter Publications, Inc., and any other legal entity known as and using the trademarks or assumed name Fort Worth Star Telegram; WBAP Radio; WBAP Television; Fort Worth Star Telegram; WBAP Radio, WBAP Television, and all individually and as members and agents of the association known as Associated Press; the Associated Press, a foreign association organized under the laws of the State of New York and doing business within the State of Texas and as grounds therefor would respectfully show the Honorable Court as follows:

1.

That Plaintiff, Edwin A. Walker, is a resident of the City of Dallas, Dallas County, Texas, and that the Defen-

[File endorsement omitted]

dants Amon G. Carter, Jr.; Carter Publications, Inc.; Fort Worth Star Telegram; WBAP Radio; WBAP Television; and Associated Press all have offices and principal places of business in the City of Fort Worth, Tarrant County, Texas, where service of citation may be had upon each of them.

[fol. 3]

2.

That on the 30th day of September, and the 1st, 2nd, and 3rd days of October, 1962, the following libelous and slanderous statements and statements with like import were uttered, published and communicated in writing and orally by Defendants on and from the premises of Defendants commonly known as Fort Worth Star Telegram, WBAP Radio and WBAP Television in the City of Fort Worth, Tarrant County, Texas, by and through their respective duly authorized agents, servants and employees, the names of whom are unknown to Plaintiff, but well known to Defendants:

October 2, 1962—"Walker, *who Sunday night led a charge of students against federal marshals on the Ole Miss Campus*, was arrested on four counts including insurrection against the United States."

October 3, 1962—"RIOTER ASKED WALKER TO LEAD CROWD; HE DID"

"Editor's Note—Former Maj. Gen. Edwin A. Walker, a key figure in week-end battling over admission of a Negro to the University of Mississippi, was eating dinner Sunday night when he says he was told there was a 'scene of considerable disturbance' on the University of Mississippi campus. He went there. Here is the story of Van Savell, 21, Associated Press newsman, who was on the scene and saw what happened.

"BY VAN SAVELL

"Oxford, Miss., Oct. 3 (AP)—Utilizing my youth to the fullest extent, I dressed as any college student

would and easily milled among the several thousand rioters on the University of Mississippi campus Sunday night.

"This allowed me to follow the crowd—a few students and many outsiders—as they charged federal marshals surrounding the century-old Lyceum building. It also brought me into direct contact with former Army Maj. Gen. Edwin A. Walker, who is now under arrest on charges of inciting insurrection and seditious conspiracy.

"Walker first appeared in the riot area at 8:45 p.m. Sunday near the University Ave. entrance about 300 yards from the Ole Miss administration building.

[fol. 4] "He was nattily dressed in a black suit, tie and shoes and wore a light tan hat.

"The crowd welcomed Walker, although this was the man who commanded the 101st Airborne Division during the 1957 school integration riots at Little Rock, Ark.

"One unidentified man queried Walker as he approached the group.

"General, will you lead us to the steps?"

"I observed Walker as he loosened his tie and shirt and nodded 'Yes' without speaking. He then conferred with a group of about 15 persons who appeared to be the riot leaders.

"The crowd took full advantage of the near-by construction work. They broke new bricks into several pieces, took survey sticks and broken soft drink bottles.

"Walker assumed command of the crowd, which I estimated at 1,000, but was delayed for several minutes when a neatly dressed, portly man of about 45 approached the group. He conferred with Walker for several minutes and then joined a group near the front.

"Two men took Walker by the arms and they headed for the Lyceum and the federal marshals. Throughout this time, I was less than six feet from Walker.

"This march toward tear gas and some 200 marshals was more effective than the previous attempts. Although Walker was unarmed, the crowd said this was the moral support they needed.

"We were met with a heavy barrage of tear gas about 75 yards from the Lyceum steps and went a few feet further when we had to turn back.

"BEFORE DOING so, many of the rioters hurled their weapons—the bricks, the bottles, rocks and wooden stakes—toward the clustered marshals.

"We fled the tear gas and the charging marshals—the crowd racing back to a Confederate soldier's statue near the grove entrance below the Lyceum.

"I went to a telephone. A few minutes later I returned and found Walker talking with several students. Shortly thereafter, Walker climbed halfway up the Confederate monument and addressed the crowd.

"I heard Walker say that Gov. Barnett had betrayed the people of Mississippi.

[fol. 5] "'BUT DON'T let up now,' he said, 'You may lose this battle but you will have been heard.'

"He continued:

"'This is a dangerous situation. You must be prepared for possible death. If you are not, go home now.'

"There were cheers. It was apparent that Walker had complete command over the group.

"By this time, it was nearly 11 p.m. and I raced to the telephone again. Upon my return, Walker was calmly explaining the 'New Frontier' government to several bystanders. He remained away from the rioting throughout the next few hours, but advised on several tactics.

"One Ole Miss student queried the former general, 'What can we use to make the tear gas bombs ineffective? Do you know of any way that we can attack and do some damage to those damn marshals?'

"Walker suggested the use of sand to snuff out the tear gas.

"This stuff works real well, but where can you get it?" he asked.

"At this time the rioters were using a university fire truck and five portable fire extinguishers in an attempt to make the tear gas bombs ineffective.

"I left Walker and walked about 100 yards away where Molotov cocktails—gasoline, in bottles with a fuse—were being made.

"Again I left the area for a telephone. As I walked toward a dormitory with George Bartsch of the Little Rock Associated Press bureau, we were attacked by marshals who mistook us for students. We were deluged by tear gas, manhandled, handcuffed and beaten with clubs during a 200-yard walk back to the Lyceum building.

"Thanks to recognition from Chief Marshal James P. McShane, we were quickly released and given freedom in the marshals' headquarters.

"Within minutes rifle and shotgun fire erupted from the rioting crowd and two men—one a French newsman—were killed. We considered ourselves lucky to have been arrested and glad to be behind closed, heavily guarded doors."

[fol. 6]

3.

That prior to the occasion of so publishing, uttering, and communicating, causing to be published, uttered and communicated, the statements in question, the Defendants and each of them by and through their duly authorized agents, servants and employees, were put on notice of the likelihood that the above described statements were untrue by receipt of the following communication:

"Lights on the campus were smashed, leaving it in almost total darkness. A number of non-rioting students left. Girls streamed out of dormitories, some half dressed, got in cars and fled the campus.

"During a lull in the rioting, General Edwin Walker mounted a confederate statue on the campus and begged the students to cease their violence. He said: 'This is not the proper route to Cuba.' His plea was greeted with one massive jeer.

"Walker, who commanded federal troops which were sent to Little Rock five years ago, was seen striding toward the demonstration wearing a big Texas hat. He had several aides surrounding him.

"As he concluded his speech, three adults were seen walking onto the campus with their arms loaded with whole bricks and triangular pieces of stone. One marshal was struck on the leg by a two-foot iron pipe welded by a student.

"A magazine reporter was slugged and kicked and knocked to the ground. He had an ugly gash over his left temple and was dragged to safety by two students.

"Jagged pieces of soft drink bottles and pieces of metal littered the ground.

"One youth set off a fire extinguisher and aimed it into the face of one of the drivers of trucks used to bring in the marshals.

"A state patrol officer was asked by a young man: 'Do you plan to move this crowd back out of here?' He replied, 'What crowd—you mean these bystanders?'

"Demonstrators carried confederate flags on staffs. Many appeared not to be students."

[fol. 7]

4.

That despite receipt of the notice described in the preceding paragraph, the statements in question were wilfully, and recklessly published, uttered and communicated to the general public in Tarrant County and surrounding areas by Defendants in heedless disregard of Plaintiff's rights and reputation. The above statements constitute and are reckless, false, wilful and malicious accusations that Edwin A. Walker wilfully committed infamous crimes all to the detri-

ment of Edwin A. Walker's reputation and in violation of his rights.

5.

That even though the Defendants and each of them have had ample and daily opportunity to retract such statements for almost a year, the Defendants have failed and refused to so do.

6.

That Edwin A. Walker is an upright and honorable citizen of the United States of America and the State of Texas. His service to his country throughout his life have been well beyond the call of duty and that prior to the publishing, uttering and communicating of the above malicious statements, he had an untarnished reputation as a patriotic, law abiding, peace loving and God fearing citizen with unbounding love and sense of duty to his country and fellow citizens. In this connection, it should be remembered that Edwin A. Walker gave his career to the honorable service of his country rising through the ranks of the United States Army from the status of a cadet at the United States Military Academy to the rank of Major General. That during this [fol. 8] time our country as well as our country's allies were so appreciative of his conduct, ability and reputation that he received the following awards and commendations, among others:

The Silver Star

The Bronze Star with Oak Leaf Cluster

Combat Infantryman's Badge (Second award)

Senior Paratroopers Badge (47 jumps)

Legion of Merit with Cluster

Commendation Ribbon

Korean Unit Citation

French Croix de Guerre (1943)

Norwegian Order of St. Olav (1946)

Order of the British Empire (1945)

Korean Ulchi Medals with Gold and Silver Star (1951-1953)

8.

That as a result of Edwin A. Walker's conduct, ability and reputation he was assigned the following sensitive, vital and responsible duties, among others, all of which duties were performed with distinction:

- Commanding Officer, 1st Special Service Force (airborne, amphibious, mountain and ski troops) in Italy, France and Germany

- Commanding Officer, Task Force "A", Oslo, Norway

- Senior Advisor, First Republic of Korea Corps

- Chief Army Section Military Assistance and Advisory Group, Taipei, Taiwan and Advisor to Commander in Chief, Chinese Nationalist Army

- Commanding General, 25th Division Artillery

- Chief, U. S. Army Military District, Little Rock, Arkansas, and Commander, IX U. S. Army Corps (Reserve)

- [fol. 9] Commanding General, 24th Infantry Division

- Assistant Deputy Chief of Staff Operations, Headquarters U. S. Army Europe

- Chief of Staff for Training and Operations, Headquarters, U. S. Army Pacific

9.

Subsequently, the said Edwin A. Walker determined that the course and conduct of the political affairs of our nation were taking a turn detrimental to the best interests of his fellow Americans to the extent that he could not in good conscience remain silent. Having due recognition and respect of his position as a Major General in the United States Army, he then determined that the only proper, lawful and honorable way that he could speak out was after he resigned said commission, so that he could speak out as a private citizen. This he did.

10.

That as reflected above Edwin A. Walker has always conducted himself as a peaceful, law-abiding citizen who not only respects and obeys, but upholds, the laws of the United States. That Edwin A. Walker is not guilty of the criminal acts which Defendants maliciously and viciously accused him, but on the contrary, did attempt to restore peace and prevent violence on the occasion in question. That despite this, and as a direct result of the above described statements Edwin A. Walker no longer has the untarnished reputation to which he is entitled.

11.

That as a direct and proximate result of Defendants' wilfully and maliciously publishing, uttering and communicating [fol. 10] the above described accusations, Edwin A. Walker has been exposed to the public hatred, contempt and ridicule, and his reputation as above described has been severely injured and damaged and the said Edwin A. Walker has been caused to suffer pain and anguish as a result therefrom, all to his actual damages in the amount of not less than One Million Dollars (\$1,000,000.00) for which amount suit is brought.

12.

That the above described statements of Defendants were published, uttered and communicated both orally and in writing maliciously and wilfully with full realization of the damages Plaintiff would suffer for two apparent purposes:

1. To sell newspapers thereby increasing Defendants' profits at the expense of Edwin A. Walker.
2. To discredit and ruin Edwin A. Walker's reputation.

That therefore Plaintiff is entitled to recover punitive damages in an amount of not less than One Million Dollars (\$1,000,000.00) for which amount this suit is brought.

Wherefore, Premises Considered, Edwin A. Walker prays that Defendants and each of them be cited in terms of law, that they appear in answer herein and upon final trial and hearing hereof, Defendants and each of them, jointly and severally, be ordered to pay Two Million Dollars (\$2,000,000.00) and that Edwin A. Walker further prays for such other and further relief, both at law and in equity to which he may be justly entitled.

Matthews & Weaver, By Joe W. Matthews, 812 Fidelity Union Life Building, Dallas 1, Texas, Ri 8-8347, Attorneys for Plaintiff.

[fol. 11]

IN THE SEVENTEENTH JUDICIAL DISTRICT COURT

IN AND FOR TARRANT COUNTY, TEXAS

No. 31741-C

[Title omitted]

PLAINTIFF'S SECOND AMENDED PETITION—Filed June 2, 1964

To the Honorable Judge of Said Court:

Comes now Edwin A. Walker, plaintiff in the above styled and numbered cause and filed this his Second Amended Petition complaining of The Associated Press, a foreign association organized under the laws of the State of New York and doing business within the State of Texas and as grounds therefor would respectfully show the Honorable Court as follows:

I

That plaintiff, Edwin A. Walker, is a resident of the City of Dallas, Dallas County, Texas and that the defendant, Associated Press has an office and principal place of

[File endorsement omitted]

business in the City of Fort Worth, Tarrant County, Texas, where service of citation may be had upon it.

II

That on the 2nd and 3rd days of October, 1962, defendant falsely, maliciously, knowingly and in reckless disregard of the truth uttered, published and communicated in writing on and from the premises of the Fort Worth Star Telegram, for monetary consideration, the following libelous and defamatory statements in the form of wire service reports, falsely accusing plaintiff of crimes in violation of the penal code of the United States of America which publications are as follows:

- 1) October 2, 1962 "*Walker, who Sunday night led a charge of students against federal marshals on the Ole Miss Campus, was arrested on four counts including insurrection against the United States.*"
- 2) October 3, 1962 "*RIOTER ASKED WALKER TO LEAD CROWD; HE DID*"

[fol. 12]

- 3) (Editors Note: Former Maj. Gen. *Edwin A. Walker*, a key figure in the week-end battling over admission of a Negro to the University of Mississippi, was eating dinner Sunday night when he says he was told there was a 'scene of considerable disturbance' on the University of Mississippi Campus. He went there. Here is the story of Van Savell, 21, Associated Press newsman, who was on the scene and saw what happened.)

By Van Savell: Oxford, Miss., October 3, 1962 (AP)
 "Utilizing my youth to the fullest extent, I dressed as any college student would and easily milled among the several thousand rioters on the University of Mississippi Campus Sunday night.

- 4) "*This allowed me to follow the crowd—a few students and many outsiders—as they charged federal mar-*

shals surrounding the century old Lyceum Building. It also brought me into direct contact with former Army Maj. Gen. Edwin A. Walker, who is now under arrest on charges of inciting insurrection and seditious conspiracy.

"Walker first appeared in the riot area at 8:45 p.m., Sunday near the University Avenue entrance about 300 yds. from the Ole Miss Administration Building.

"He was nattily dressed in a black suit, tie and shoes and wore a light tan hat.

5) *"The crowd welcomed Walker, although this was the man who commanded the 101st Airborne Division during the 1957 school integration riots at Little Rock, Arkansas.*

6) *"One unidentified man queried Walker as he approached the group. 'General, will you lead us to the steps!'*

7) *"I observed Walker as he loosened his tie and shirt and nodded 'Yes' without speaking. He then conferred with a group of about 15 persons who appeared to be the riot leaders.*

"The crowd took full advantage of the near-by construction work. They broke new bricks into several pieces, took survey sticks and broken soft drink bottles.

8) *"Walker assumed command of the crowd, which I estimated at 1,000 but was delayed for several minutes when a neatly dressed, portly man of about 45 approached the group. He conferred with Walker for several minutes and then joined a group near the front.*

9) *"Two men took Walker by the arms and they headed for the Lyceum and the federal marshals. Throughout this time, I was less than six feet from Walker.*

- 10) *"This march toward tear gas and some 200 marshals was more effective than the previous attempts. Al- [fol. 13] though Walker was unarmed, the crowd said this was the moral support they needed.*
- 11) *"We were met with a heavy barrage of tear gas about 75 yards from the Lyceum steps and went a few feet further when we had to turn back.*
- 12) *"Before doing so, many of the rioters hurled their weapons—the bricks, the bottles, rocks and wooden stakes—toward the clustered marshals.*
- 13) *"We fled the tear gas and the charging marshals—the crowd racing back to a Confederate soldier's statue near the grove entrance below the Lyceum.*
- 14) *"I went to a telephone. A few minutes later I returned and found Walker talking with several students. Shortly thereafter, Walker climbed halfway up the Confederate monument and addressed the crowd.*
- 15)-
- 16) *"I heard Walker say that Gov. Barnett had betrayed the People of Mississippi. 'But don't let up now,' he said, 'You may lose this battle, but you will have been heard.'*
- 17) *"He continued: 'This is a dangerous situation. You must be prepared for possible death. If you are not, go home now.'*
- 18) *"There were cheers. It was apparent that Walker had complete command over the group.*
- 19) *"By this time, it was nearly 11:00 p.m. and I raced to the telephone again. Upon my return, Walker was calmly explaining the 'New Frontier Government' to several bystanders. He remained away from the rioting throughout the next few hours, but advised on several tactics.*

- 20) "One Ole Miss student queried the former General, 'What can we use to make the tear gas bombs ineffective? *Do you know of any way that we can attack and do some damage to those damn Marshals?*'"
- 20) "Walker suggested the use of sand to snuff out the tear gas.
- 21) "'This stuff works real well, but where can you get it?', he asked.
- 22) "At this time the rioters were using a University fire truck and fire extinguishers in an attempt to make the tear gas bombs ineffective.
- 23) "I left Walker and walked about 100 yards away where Molotov cocktails—gasoline, in bottles with a fuse—were being made.
- 24) "Again I left the area for a telephone. As I walked toward a Dormitory with George Bartsch of the Little Rock Associated Press Bureau, we were attacked by Marshals who mistook us for students. [fol. 14] We were deluged by tear gas, manhandled, handcuffed and beaten with clubs during a 200 yard walk back to the Lyceum Building.
- 24) "Thanks to recognition from Chief Marshal James P. McShane, we were quickly released and given freedom in the Marshals' Headquarters.
- 25) "Within minutes rifle and shotgun fire erupted from the rioting crowd and two men—one a French newsman—were killed. We considered ourselves lucky to have been arrested and glad to be behind closed, heavily guarded doors."

Plaintiff states that such part of defendant's news releases, as italicized above, are false, malicious, and in reckless disregard of the truth as to the respective numbered paragraphs as follows:

- 1) Plaintiff led no charge against Federal Marshals on the Ole Miss Campus; and this statement of fact in plaintiff's news release is a completely fabricated falsehood.
- 2) Although plaintiff was asked to lead a charge on several occasions, he refused to do so; and, at no time, participated in the rioting.
- 3) Plaintiff was not a "key figure in week-end battling", except for the false news reports issued by defendant.
- 4) Insofar as this paragraph infers that the author, Van H. Savell, was in "direct contact" with plaintiff, during a charge against Federal Marshals surrounding the Lyceum Building, it is false.
- 5) The statement that, "the crowd welcomed Walker" is false. Although separate individuals, at various times, greeted plaintiff, there was no concerted action by the crowd.
- 6) The statement that an unidentified man queried Walker, *as he approached the group*, "General, will you lead us in a charge?" is false. Although various individuals, from time to time requested plaintiff to lead a charge, which he always refused, there was no such request when plaintiff first entered the Campus; and plaintiff, at no time, "approached a group".
- 7) This paragraph is completely false.
- 8) The statement that, "Walker assumed command of the crowd" is completely false, and particularly so, when taken in context with the remainder of the report that, "Walker first appeared in the riot area at 8:45 * * * the crowd welcomed Walker * * * unidentified man queried Walker, 'General, will you lead us to the steps' * * * Walker assumed command of the crowd." The true facts are that, when plaintiff first arrived on the Campus, he had no contact with any crowd of

[fol. 15] people, and only walked around in the area near the Confederate Monument and to the east of the flagpole in the center of the Circle; and had neither the inclination nor the capability of "assuming command of the crowd." The statement of an estimated 1,000 people, inferred to be in the immediate presence of plaintiff, is a gross exaggeration. Although there may have been 1,000 people upon the Campus, the entire crowd was never assembled in one group at one time. The statement that plaintiff was "delayed for several minutes when a neatly dressed, portly man of about 45 approached the group" is also false. Although a man fitting this description, one Talmage Witt, was near plaintiff from the time plaintiff first entered the Campus until approximately two hours thereafter, he never "approached a group" of which plaintiff was a part, nor did he confer with plaintiff for several minutes, as falsely stated by the above report.

9) The statement that "Two men took plaintiff by the arms, and they headed for the Lyceum and the Federal Marshals" is completely false. The remainder of this paragraph is also false, in the inference that the author, Van H. Savell, was with plaintiff in an alleged movement toward Federal Marshals, as stated in the first sentence of the paragraph.

10) This paragraph is false. Plaintiff participated in no march "toward tear gas and marshals." Plaintiff was unarmed, as stated; but he gave the crowd no "moral support", nor did "the crowd" make such statement.

11) This paragraph is false in the inference that plaintiff was "met with a barrage of tear gas", while participating in a march against U. S. Marshals.

12) This paragraph is also false in the inference that plaintiff was participating with "the rioters who hurled their weapons".

13) This paragraph is also false, in the inference that plaintiff was participating in the group that was "charging marshals".

14) Plaintiff has no knowledge of the author, Van H. Savell, going to a telephone; but alleges that the Associated Press newsman, Ben Thomas, to whom Van H. Savell made his telephone report has testified under oath, that he received no report from Savell until after the incident when plaintiff addressed students from a Confederate Monument. Plaintiff has no knowledge of the truth or falsity of the statement that the author, Van H. Savell, "returned and found Walker talking with several students. Shortly thereafter, Walker climbed half-way up the Confederate Monument and addressed the crowd."; but alleges that Van H. Savell has testified, under oath, that, when he returned from making his alleged phone call, he found plaintiff "standing on a ledge of the Confederate Statue." Plaintiff does not know which of the statements by Savell, if either, are true. Plaintiff admits that he did address a group of people from the Confederate Statue.

15) This statement is false. Plaintiff, at no time, stated that Gov. Barnett had betrayed the People of Mississippi.

[fol. 16] 16) The statement attributed to plaintiff, "but don't let up now" is false. The remainder of the alleged statement, although taken out of context, is essentially true.

17) This alleged statement, attributed to plaintiff, is false.

18) Although there were some cheers during the course of plaintiff's talk from the monument, there were also boos, when plaintiff remonstrated with the students to avoid violence. The statement that plaintiff had complete command over the group is completely false.

19) The statement, that it was nearly 11:00 p.m. when plaintiff finished talking from the monument is false. Plaintiff has no knowledge as to whether the author, Van H. Savell, "raced to the telephone again", other than the sworn testimony of the Associated Press newsman, Ben Thomas, that Savell made but one report, and that was after plaintiff's talk on the monument. Plaintiff states that the report that plaintiff "advised on several tactics" is false.

20) These statements although taken out of context, are essentially true.

21) This statement is false.

22) This statement is essentially true, although plaintiff has no knowledge as to the use of fire extinguishers.

23) Plaintiff has no knowledge as to this statement.

24) Plaintiff has no knowledge as to these statements.

25) This statement is false as to the timing, "within minutes". Sporadic firing had occurred long prior to this time.

III

Prior to defendants publication of the false charge that plaintiff was violating the law of the United States of America, in commanding and leading a charge against United States Marshals, plaintiff bore a good reputation as an upright, honorable and law abiding citizen of the United States of America and the State of Texas; and, for over 30 years, served his country as a member of the United States Army, both in War and at Peace, with devotion and loyalty. Prior to the above false and malicious statements, plaintiff had never been charged with a crime, and bore a reputation, in accordance with his oath as an officer of the United States Army of being committed to defending and supporting the Constitution of the United States.

[fol. 17]

IV

Plaintiff states that the above false statements of fact are not within the privilege extended to newspapers or periodicals by Article 5432, Vernon's Texas Civil Statutes; and, being statements of fact, do not come within the classification of reasonable and fair comment or criticism protected by the privilege statute. The only statement that could be classed as "comment", "This march toward tear gas and some 200 marshals was more effective than the previous attempts" is not reasonable or fair comment or criticism, since it is based upon a false statement of fact.

V

As a direct and proximate result of the defendants' falsely, wilfully, maliciously and in reckless disregard of the truth, publishing, uttering and communicating the above described written statements, knowing that such statements would be printed, and widely circulated throughout the State of Texas by the Fort Worth Star Telegram, plaintiff has been exposed to the public hatred, contempt and ridicule; and his reputation, as above described, has been severely defamed, injured and damaged, causing mental anguish, humiliation and embarrassment, all to his general damage in the amount of \$1,000,000.00, for which plaintiff is entitled to judgment herein.

VI

Plaintiff states that the above described statements, charging plaintiff with the commission of a crime against the law of the United States of America, were published, uttered and communicated by defendant, Associated Press, for monetary consideration, and for the purpose of having the same re-published and circulated throughout the State of Texas by the Fort Worth Star Telegram, maliciously, wilfully and in reckless disregard of the truth. Aside from, and in addition to the malice implicit and inherent in the

defendant's falsely accusing plaintiff of a crime; defendant's entire handling of the news releases concerning plaintiff [fol. 18] between the dates of September 30, 1962 and January 22, 1963 reveal malice and ill will, as well as slanted and distorted reporting, including the following:

1) Between the dates of September 30, 1962 through October 7, 1962, defendant disseminated and published, through its wire service connections with the Fort Worth Star Telegram reports that plaintiff had led a charge against U. S. Marshals, had been arrested, charged with assaulting U. S. Marshals, conspiracy to intimidate and injure U. S. Marshals, insurrection and seditious conspiracy, and that plaintiff had been committed to the U. S. Medical Center, Springfield, Missouri, a place for confinement of criminal insane prisoners.

2) In reporting the incidents involving plaintiff's arrest and commitment, the defendant deliberately refrained from fairly and impartially reporting the true facts that he had been transported from the State of Mississippi, where he had been committed by a judicial officer, and into the State of Missouri, without a Court Order, and that, on the following day, a Court Order was entered by the U. S. District Court at Oxford, Mississippi ordering plaintiff to be transferred and committed to the U. S. Medical Center for Federal Prisoners at Springfield, Missouri, which order had been entered, without notice to plaintiff, without a hearing, at which plaintiff was represented, and without the benefit of counsel for plaintiff. Defendant further refrained from reporting that such Order by the U. S. District Court at Oxford, Mississippi had been entered upon an affidavit by Dr. Charles E. Smith, Medical Director and Chief Psychiatrist of the Federal Bureau of Prisons, who had never seen plaintiff, but had examined news reports.

3) Defendant failed to further report the true facts that, on October 16, 1962, plaintiff filed in the U. S. District Court at Oxford, Mississippi a Motion to Strike the entire proceeding by which plaintiff was committed to the Federal Mental Hospital, upon the ground that such commitment, in violation of the right to make bail, and without counsel, notice or hearing, violated the Constitutional Rights of plaintiff. Plaintiff alleges that the obvious disparity in emphasis placed by defendant's reporting of the alleged violation of the civil rights of the student, James Meredith, which was dramatically and extensively projected by defendant, and the alleged violation of plaintiff's Constitutional Rights which was completely ignored by defendant, reveals the existent malice of defendant toward plaintiff.

4) Plaintiff states that defendant's malice toward plaintiff is further revealed by defendant's reporting of two Court hearings before the U. S. District Court at Oxford, Mississippi, involving plaintiff, as follows:

a) On November 21, 1962, in covering a sanity hearing before the U. S. District Court at Oxford, Mississippi on November 21, 1962 defendant deliberately slanted its news report by emphasizing that a Government witness, Dr. Guttmacher testified [fol. 19] that a study of plaintiff's records disclosed confusion and examples of defective judgment, with possibility that there had been a deterioration in the mental processes of plaintiff in the last year or two. Despite the fact that defendant had given extensive publicity upon its major wire trunk report to the Fort Worth Star Telegram of such testimony by Government witnesses questioning plaintiff's mental capacity, defendant failed to issue a wire service report to the same paper that a Court appointed Psychiatrist, Dr. Robert L. Stubblefield had reported that plaintiff was "currently functioning under the superior level of intelligence". Defen-

dant's report of Judge Clayton's comments was also slanted, in reporting that the Court appointed Psychiatrist, Dr. Robert L. Stubblefield, had expressed no opinion on the sanity of Walker, when the Court, in reality, had stated that the Stubblefield report was "essentially negative; that is to say, there is no opinion expressed that Edwin A. Walker is presently insane or incompetent." Such reporting further reveals malice and bias on the part of defendant.

b) On January 22, 1963, after the Mississippi Federal Grand Jury had failed to indict plaintiff, and the charges against plaintiff had been dismissed by the Government, defendant reported that such charges had been dismissed by U. S. District Judge Clayton, "without prejudice", and added an interpretive statement, not made by the Court as follows: "This means that the Federal Government may reconsider them before the Statute of Limitation expires in Five Years", which reporting further reveals malice and bias on the part of defendant toward plaintiff.

5) Because of the malicious and defamatory report by defendant, as above set forth in Paragraph II, falsely accusing plaintiff of a crime, to the discredit and defamation of plaintiff's reputation, and in reckless disregard of the truth, plaintiff is entitled to recover punitive damages against the defendant in the sum of \$1,000,000.00..

6) The malice, bias and prejudice of defendant toward plaintiff is further demonstrated by the failure of defendant to further investigate and correct the false report by their reporter, Van H. Savell, as above set forth, after defendant had noticed from news report of United Press International, on October 1, 1964, that the report of Savell was untrue, which United Press news report included the following:

"During a lull in the rioting, General Edwin A. Walker mounted a confederate statue on the campus and begged the students to cease their violence. He said: 'This is not the proper way to Cuba.' His plea was greeted with one massive jeer.

"Walker, who commanded federal troops which were sent to Little Rock five years ago, was seen striding toward the demonstration wearing a big Texas hat. He had several aides surrounding him."

[fol. 20] Wherefore, Premises Considered, plaintiff prays judgment against the defendant, Associated Press, in the sum of \$1,000,000.00 general damages and \$1,000,000.00 punitive or exemplary damages, and the costs of this action.

Andress, Woodgate, Richards & Condos, Fidelity Union Life Building, Dallas, Texas, By: William Andress, Jr.;

Looney, Watts, Looney, Nichols & Johnson, 219 Couch Drive, Oklahoma City, Oklahoma, By: C. J. Watts;

Attorneys for Plaintiff.

[fol. 21]

IN THE DISTRICT COURT OF TARRANT COUNTY, TEXAS

17TH JUDICIAL DISTRICT

No. 31741-C

[Title omitted]

SECOND AMENDED ORIGINAL ANSWER OF DEFENDANT,
THE ASSOCIATED PRESS—Filed June 5, 1964

Now comes defendant, The Associated Press, and makes and files this its Second Amended Original Answer directed to Plaintiff's Second Amended Petition, and says:

1.

Defendant specially excepts to the allegations contained in Paragraph II for the following reasons:

(a) same are so vague, general, indefinite, immaterial and prejudicial that defendant is not apprised of the kind and character of proof it will be required to meet in that the way and manner of the alleged publication and communication in writing on and from the premises of the Fort Worth Star-Telegram is not set forth; in that the question of monetary consideration is immaterial, prejudicial and inflammatory, and such allegation does not apprise the defendant of the proof that will be offered in connection therewith; in that said allegations do not apprise the defendant of what crime in violation of the penal code of the United States of America the plaintiff is complaining of, nor do the allegations of said Paragraph II apprise the defendant of what part of the same plaintiff is contending constitutes an accusation of crime.

(b) said allegations are mere conclusions of the pleader without adequate facts to support.

(c) While there are some allegations of falsity, there are no sufficient allegations of what plaintiff is contending is libelous or libelous per se;

[fol. 22] (d) by such pleading the defendant is not apprised of which of said allegations plaintiff is contending is a headline or a caption and what is the body of an alleged wire service report;

(e) As directed to that portion of Paragraph II appearing on page 4 and immediately following the allegation "Plaintiff states that such part of defendant's news releases, as underlined above, are false, malicious, and in reckless disregard of the truth" is argumentative, redundant, prejudicial, inflammatory, evidentiary and do not allege any ultimate issue in the case; the allegations that the same were malicious and in reckless disregard of the truth is a con-

clusion on the part of the pleader without allegation of facts, is an attempt to advise the jury that malice can be inferred from the publication of the article itself, and all of the remaining portion of said Paragraph II after the above quotation should be stricken;

(f) the allegations in subparagraph 14 on page 5 and subparagraph 19 on page 6, a part of Paragraph II of plaintiff's second amended petition; should be stricken for the reason that the testimony of two of the witnesses is arrayed one against the other and then inaccurately and improperly so, which is highly prejudicial and inflammatory, is argumentative, and does not allege any ultimate fact issue, and, in the alternative and without waiving the foregoing exceptions, such allegations should be stricken.

2.

Defendant specially excepts to the allegations in Paragraph III for the reason that the same are so vague, general and indefinite that this defendant is not apprised of the kind and character of proof that it will be required to meet, and in particular does not allege what law or laws plaintiff was claiming that defendant charged him with or what portions of the articles alleged to be false constituted a charge of such crime.

[fol. 23]

3.

Defendant specially excepts to the allegations contained in Paragraph IV for the following reasons:

- (a) the same are mere legal conclusions of the pleader;
- (b) do not allege any ultimate fact issue;
- (c) invades the province of the court and jury as to what is reasonable or fair comment;
- (d)*is prejudicial and inflammatory and argumentative also as to the facts.

4.

Defendant specially excepts to Paragraph V for the following reasons:

(a) in the allegations "wilfully, maliciously and in reckless disregard of the truth," the same are general and indefinite, and this defendant is not apprised of the kind and character of proof that it will be required to meet;

(b) the same are mere conclusions of the pleader without facts;

(c) does not differentiate between those parts of the written statements claimed to be false and those admitted to be true as to any claimed damages suffered therefrom, and the same are prejudicial and inflammatory.

5.

Defendant specially excepts to the allegations in the opening paragraph of Paragraph VI for the following reasons:

(a) as to the statements made in the opening paragraph of said Paragraph VI, the same are so vague, general and indefinite that this defendant is not apprised of the kind and character of proof it will be required to meet, especially in connection with what crimes plaintiff is alleging that he was charged with;

(b) that the allegation "for monetary consideration" is immaterial, prejudicial and inflammatory;

[fol. 24] (c) that as to the allegation "for the purpose having the same republished and circulated throughout the State of Texas by the Forth Worth Star Telegram," it is highly prejudicial, inflammatory and immaterial and seeks to impose on this defendant a greater burden or duty than that imposed by law;

(d) with reference to the allegation "maliciously, wilfully and in reckless disregard of the truth" for the reason

that such allegations are conclusions of the pleader, not based on any fact, and do not allege any ultimate fact issue;

(e) with reference to the allegation "in addition to the malice implicit and inherent in the defendant's falsely accusing plaintiff of a crime," same is highly prejudicial and inflammatory and is an attempt to inform or influence the jury that the publication of the article itself infers malice, all of which is contrary to law.

6.

Defendant further specially excepts to the allegations in Paragraph VI beginning with the allegation "defendant's entire handling of the news releases concerning plaintiff between the dates of September 30, 1962 and January 22, 1963 reveal malice and ill will, as well as slanted and distorted reporting, including the following:" and continuing to the end of said paragraph VI, for each and all of the following reasons:

(a) the same are so vague, general and indefinite that this defendant is not apprised of the kind and character of proof it will be required to meet;

(b) the same constitutes an effort on the part of the plaintiff to inject into this case matters that are barred by limitation;

(c) same are immaterial and irrelevant to any issue in the case and are highly inflammatory and prejudicial;

(d) the allegations with respect to defendant's failure to report various matters are completely immaterial because defendant is under no duty to plaintiff to report any of [fol. 25] such matters, and, further, because there is no allegation that defendant had knowledge of the matters it is charged with having failed to report;

(e) such allegations are too remote in time and in their complete lack of relation to or connection with the events

occurring on the campus of the University of Mississippi as set forth in the alleged article upon which plaintiff sues;

(f) the phrase "slanted and distorted reporting" is mere conclusion of the pleader, and is highly prejudicial and inflammatory and is irrelevant and immaterial.

(g) with particular reference to the allegations in subparagraph 5 of Paragraph VI, defendant says that the allegations "because of the malicious and defamatory report by defendant, as above set forth, falsely accusing plaintiff of a crime," the same are insufficient to apprise defendant of what report plaintiff is referring to, plaintiff having alleged two reports in Paragraph II and several other reports in Paragraph VI; and insofar as said allegations may refer to reports described in said Paragraph VI, same appear on their face to be barred by limitations, and constitute an attempt on the part of the plaintiff to inject into this suit alleged publications and reports published more than one year prior to the filing of plaintiff's second amended petition;

(h) with particular reference to the allegations in subparagraph 6 of Paragraph VI, defendant says that same are completely immaterial and should be stricken in that any alleged notice that defendant purportedly received from United Press International would be hearsay, and defendant was under no duty to believe the same or take any action based thereon, and such allegations are too vague and indefinite to apprise defendant of when, where and how it is alleged to have received such notice, and such allegations show on their face that the alleged notice is not set forth in full in said pleading.

[fol. 26] Wherefore, defendant, The Associated Press, prays that each and all of said special exceptions be sustained.

I.

This defendant, The Associated Press, denies each and every, all and singular, the allegations in plaintiff's said

amended petition contained and demands strict proof thereof.

II.

By way of further answer herein, and without waiving any of the foregoing pleas, defendant, The Associated Press, would respectfully show to the court and the jury that the plaintiff is not entitled to recover in this cause for the reason that the statements made in the publications complained of as to statements of fact were and are true in fact and in substance.

III.

By way of further answer herein, and without waiving any of the foregoing pleas, defendant, The Associated Press, would respectfully show to the Court and the jury that the plaintiff is not entitled to recover damages in this cause of any nature for each and all of the following reasons considering all the material facts and circumstances surrounding the plaintiff's alleged claim of damage:

(1)

Plaintiff by his own statements in pleadings filed in this cause has alleged that he resigned his Army Commission in order to speak out and install himself as a leader and public figure. Plaintiff, Edwin A. Walker, voluntarily injected himself into a situation of turmoil, resentment and excitement in Mississippi and of great national publicity and interest everywhere at the time he uttered certain public statements, more fully hereinafter alleged, on television, radio and to newsmen and by his subsequent trip to Jackson, Mississippi, and Oxford, Mississippi, at the very height [fol. 27] of such tension and turmoil between September 10 and October 1, 1962.

(2)

The publications complained of in this action insofar as the same consist of comments were and are fair comments

made in good faith upon facts which related to matters that were and are affairs of public interest, importance and concern and related to acts and utterances of plaintiff, a public figure, in public places and at public meetings.

(a) The background and events into which Walker injected himself are set forth in the following paragraphs.

(b) On or about May 31, 1961, one James H. Meredith, a colored person, filed a complaint in the United States District Court, Southern District of Mississippi, and on behalf of himself and all other colored students in the State of Mississippi similarly situated, against Charles D. Fair, President of the Board of Trustees of the State Institutions of Higher Learning in the State of Mississippi, and others connected with the University of Mississippi, seeking admission to said University. Thereafter, and on or about February 3, 1962, the United States District Court for the Southern District of Mississippi rendered a decision reported in 202 F. Supp. 224, denying Meredith rights of admission to the University of Mississippi.

Thereupon Meredith appealed to the United States Court of Appeals for the 5th Circuit, at New Orleans, and on or about June 25, 1962, said Court rendered a decision (305 F.2d 343) in which said Court reversed the decision of the United States District Court, thereupon remanding said action, with directions to the United States District Court for the Southern District of Mississippi to grant forthwith the relief prayed for by Meredith and to issue a permanent injunction against each and all of the defendants in said suit and all persons acting in concert with them, as well as all persons having knowledge of said decree, and directing and compelling admission of the said Meredith to the [fol. 28] University of Mississippi as a student.

(c) Thereafter, and on or about July 26, 1962, the United States Court of Appeals, 5th Circuit, at New Orleans, vacated certain stay orders signed by Federal Judge Ben F. Cameron, and further directed the U. S. District Court for

the Southern District of Mississippi to enter the judgment and the injunction as theretofore ordered (306 F.2d 374). On July 28, 1962, the said United States Court of Appeals for the 5th Circuit, at New Orleans, also entered a certain interim order to the same effect.

(d) Subsequently Judge Ben F. Cameron issued three other successive stays of execution of the mandate of the United States Court of Appeals, 5th Circuit, which ordered the admission of Meredith to the University of Mississippi, said stays to operate pending an appeal to the Supreme Court of the United States. On or about September 10, 1962, Mr. Justice Black of the U. S. Supreme Court entered an order (1) to vacate the orders of Judge Ben F. Cameron, and (2) that the judgment and mandate of the Court of Appeals for the 5th Circuit at New Orleans should be obeyed and immediately carried out, and (3) that pending any appeal, the parties were enjoined from taking any steps to prevent enforcement of the Court of Appeals, 5th Circuit, judgment and mandate.

(e) On or about September 13, 1962, the United States Court for the Southern District of Mississippi as directed by the U. S. Court of Appeals, 5th Circuit, at New Orleans, issued an injunction and ordered that the said Meredith be admitted to the University of Mississippi forthwith.

(f) On or about September 20, 1962, the said Meredith appeared on the campus of the University of Mississippi accompanied by U. S. Marshals for the purpose of registering as a student pursuant to the orders of the United States Courts above set forth, but the Governor of Mississippi, the Honorable Ross Barnett, then and there rejected the application of the said Meredith to the University of Mississippi.

(g) Again, and on or about September 25, 1962, the said Meredith appeared at the offices of the Board of Trustees of State Institutions of Higher Learning, at Jackson, Mississippi, for the purpose of registering as a student pur-

suant to the prior orders of the United States Courts. When Meredith sought to enter the offices, as aforesaid, the Honorable Ross Barnett, Governor of the State of Mississippi, and certain officers acting under his direction, again barred the said Meredith and denied him admission to the University of Mississippi. On or about September 26, 1962, the said Meredith sought to enter the campus of the University of Mississippi where he was barred from so entering by the Honorable Paul B. Johnson, Jr., Lieutenant Governor of the State of Mississippi, and certain state police acting under his orders, thereby denying the aforesaid Meredith admission to the University of Mississippi. On September 25, 1962, the United States Court of Appeals for the 5th Circuit, at New Orleans, entered another restraining order against the Honorable Ross Barnett, Governor of the State of Mississippi, and other named officials in said State, and all persons in active concert or in participation therewith, from interfering with or obstructing in any manner the admission of the said Meredith to the University of Mississippi.

(h) Thereafter, on the same day, the United States Court of Appeals for the 5th Circuit issued its orders requiring the aforesaid Ross Barnett, Governor of the State of Mississippi, and the Honorable Paul B. Johnson, Jr., Lieutenant Governor of the State of Mississippi, to appear before said Court and show cause why they should not be held in civil contempt for willfully disobeying the orders of the United States Courts and barring the admission of Meredith to the University of Mississippi, and on or about [fol. 30] September 28 the said Court entered its judgment and order adjudging the said Ross Barnett and Paul B. Johnson, Jr. guilty of civil contempt and levied fines to continue on a daily basis unless on or before October 2, the said Governor and Lt. Governor should show to the Court that they had fully complied with all restraining orders of all the United States Courts, and that they had notified enforcement officers in the State of Mississippi to cease and

desist from interfering with the orders of the aforesaid Courts and to cooperate with the officers and agents of the United States in the execution of all orders and injunctions to the end that Meredith would be permitted to register as a student at the University of Mississippi.

(i) That the attempts of the said James H. Meredith to enter the University of Mississippi and the actions of the authorities in Mississippi preventing his entry, and the actions of the various United States Courts in making and entering said injunctions and mandates, as above set forth in the preceding paragraphs, had all been given wide publicity throughout the United States by newspapers, radio and television, and were matters of general knowledge and affairs of great public interest and concern prior to September 30, 1962. The plaintiff in this cause knew, or reasonably should have know of the court orders, injunctions and mandates herein pleaded based on knowledge acquired from an ordinary reading of the newspapers and reports from other news media and he also knew of the defiance of Governor Ross Barnett, Governor of the State of Mississippi, and of the Lt. Governor towards the fulfillment of the court orders of the United States Courts above set forth.

[fol. 31]

(3)

The plaintiff, the former Major General of the Army of the United States, following his resignation therefrom for the stated purpose of speaking out in protest as a private citizen, had made frequent public statements and had made an unsuccessful venture into politics as a candidate for Governor of the State of Texas.

Plaintiff was a well known public figure because of his long military career, his commands and duties with the Army of the United States, his role as Commanding General of the troops in the Little Rock, Arkansas, integration crisis in 1957, his resignation from the Army of the United States with the rank of Major General with the avowed

statement and purpose of being able to protest and take a stand and position in matters of public interest and affairs, and his candidacy for Governor of the State of Texas in 1962. With such background as a public figure, the plaintiff, during the critical times involved herein, between September 10, 1962 and October 1, 1962, injected himself into the Mississippi crisis with the request and/or notice for frequent press releases or conferences, from Dallas, Texas, Jackson and Oxford, Mississippi, and thereby invited comment as to his activities. His public utterances and statements were all in protest and opposition to duly constituted governmental and judicial authority and relating to the admission of Meredith to the University of Mississippi, and were in violation of the injunctive decrees issued by the United States Courts, as herein set forth, and in favor of the positions then being taken by Governor Ross Barnett and other officials in Mississippi who were seeking to obstruct Meredith's entry as a student at the University of Mississippi.

Notwithstanding such knowledge, the plaintiff by radio and other news media, beginning on or about September 27, 1962, and thereafter, called for Americans 10,000 strong from every State in the Union to go to Mississippi and [fol. 32] rally behind Governor Barnett in his stand against admitting Meredith, saying, among other things, "It is now or never. Bring your flag, your tent and your skillet."

The plaintiff, Edwin A. Walker, further injected himself into the crisis in Mississippi by proceeding to Jackson, Mississippi, on or about September 29, 1962, when he made further press releases and statements, and by then proceeding to Oxford, Miss., where he held a further press conference on September 30, 1962, at all of which he reiterated his previous position.

At about 4:30 P. M. on the afternoon of September 30, 1962, the U. S. Marshals under orders to enforce the judgments, injunctions and mandates of the United States Courts for the enrollment of Meredith as a student at the University of Mississippi, proceeded on to the campus at

Oxford, setting up a ring substantially around or in front of the Lyceum Building on the campus. At about the same time, Meredith was escorted to another part of the campus. Immediately after the arrival of the Marshals, students and others began to congregate in the Circle and in the streets adjacent to the Lyceum Building, facing the Marshals, at first taunting them with jeers and remarks, subsequently throwing lighted cigarettes and missiles at the Marshals and at the vehicles in which they arrived. The temper of the crowd became worse and more unruly, and at about 8:00 o'clock P. M. tear gas was fired. Thereafter, the rioting increased by the hour as the night progressed, resulting in injuries to many persons and much property damage to personal property, automobiles and to the campus itself.

While the plaintiff was in Oxford, Mississippi, and on or about September 30, 1962, at about 8:00 P. M., a proclamation was made by the then President of the United States to the effect that the Governor of the State of [fol. 33] Mississippi and certain other officials and other persons had been and were willfully opposing and obstructing the enforcement of the injunctions, orders and judgments of the United States Courts and the President thereupon commanded all persons engaged in such obstruction of court orders to cease and desist and to disperse and retire peaceably forthwith. In addition, the President of the United States made a TV and radio appearance on the same date at about 8:00 o'clock P. M. in which he sought in substance the same compliance with court orders. Notwithstanding said proclamation of the President of the United States and the appeal of the President, the said plaintiff immediately thereafter proceeded to the campus of the University of Mississippi, at Oxford, arriving there at approximately 8:45 P. M. on the night of September 30 and stayed on said campus for a period of several hours thereafter. Following the widespread dissemination of plaintiff Walker's statements in the press, TV and radio, not only in Mississippi but elsewhere, the plaintiff's very presence on the campus tended to increase the emotional

excitement, the explosive condition, the courage, fervor and rage of the mob, thereby increasing the dangers and damage from what at first had been a demonstration, to a riot, mob violence, and to more organized and determined attacks upon the U. S. Marshals. At the time of the arrival of the plaintiff on the campus, there had already been violence and injury to persons and property, all of which was known to the plaintiff or should have been known in the exercise of ordinary observation on the campus. On the occasion in question, the plaintiff was welcomed by the crowd as its leader and he then and there made a speech which further excited and enraged the mob and, at least on one occasion, the plaintiff did proceed as a part of a generalized movement towards the Marshals at the Lyceum Building accompanied or followed by a crowd of students [fol. 34] and others shouting and yelling defiance, some of whom when close enough to the Marshals hurled missiles toward them. On many occasions during the night in question, plaintiff would move back and forth through the Circle (an area in the vicinity of and near the front of the Lyceum Building where the Marshals were stationed). He also offered advice on how to make the tear gas bombs ineffective, and otherwise complimented, encouraged and urged on the crowd of rioters to further protest and to keep up what they were doing, all of which resulted in continual opposition to duly constituted governmental and judicial authority including violation of the injunctive decrees heretofore referred to.

Therefore, each and all of the statements complained of by plaintiff herein are fair comment and are privileged.

IV.

By way of further answer, defendant, The Associated Press, respectfully shows to the court and the jury that the dispatch to the effect that plaintiff was arrested on four counts insofar as it relates to his arrest was privileged, and the defendant therefore pleads as a defense that it was

true and that said publication was a fair and honest report of judicial proceedings and as the act or acts of the arresting officers.

V.

By way of further answer herein and adopting all the allegations heretofore made herein, this defendant, The Associated Press, denies that any malice was involved or intended on the part of this defendant in the publication of any one or all of the articles or dispatches complained of, but was occasioned only by an effort in good faith—actuated solely by a sense of duty growing out of the occasion—to report to its members and to the public what this defendant believed to be an accurate report of the plaintiff's activities in the Mississippi crisis, and to make fair [fol. 35] comment thereon, all of which is privileged.

VI.

By way of further answer herein and adopting all of the allegations heretofore made herein, this defendant denies that it was or is guilty of any conduct which would authorize the allowance of any damages, punitive or otherwise, but would further say that the allowance of any damages herein would amount to a restraint and deterrent to the publication of news and the freedom of the press as required by the First and Fourteenth Amendments to the Constitution of the United States. The publications complained of were published and circulated by the defendant among the general public; the information contained therein is true; it concerns the plaintiff, a public figure, and was related to public affairs and matters of great public concern, and the publication was made so that the public should be informed, and the same was made in good faith and without malice, so that the same is privileged. Further, the allowance of any damages under and by virtue of any rule of law as applied by the courts of the State of Texas would be in violation of the foregoing Constitutional safeguards and would be constitutionally deficient for failure to permit freedom of speech and press which are guar-

anted by the Constitution of the United States. The allowance of any damages herein also would be violative of the Constitution of the State of Texas, which prohibits the abridgment of the freedom of the press in Article I, Paragraph 8 thereof.

VII.

By way of further answer and without waiving any of the foregoing defenses this defendant would respectfully show to the Court that the publications complained of were made in good faith under the belief by the defendant they were true in substance and in fact, and in connection therewith this defendant acted in good faith and was actuated [fol. 36] solely to report to the public with respect to plaintiff's activities in the Mississippi crisis, and for these reasons the plaintiff should not recover any sums by way of damages based thereon.

VIII.

By way of further answer and without waiving any of the foregoing pleas and defenses, this defendant would respectfully show to the Court that the cause of action, if any, as to all matters complained of and Paragraph VI of the Plaintiff's Second Amended Petition arose more than one year prior to the filing thereof, and that each and all of said causes of action or complaints, if any, are barred by the one year statute of limitations, being Article 5524 of the Statutes of the State of Texas.

Wherefore, Premises Considered, this defendant, The Associated Press, prays that plaintiff take nothing by reason of this suit, and that it go hence without day and recover its costs.

Cantey, Hanger, Gooch, Cravens & Scarborough,
By J. A. Gooch, 1800 First National Bank Bldg.,
Fort Worth 2, Texas, Attorney for defendant, The
Associated Press.

[File endorsement omitted]

[fol. 37]

IN THE DISTRICT COURT OF TARRANT COUNTY, TEXAS

17TH JUDICIAL DISTRICT ..

No. 31741-C

[Title omitted]

**PLAINTIFF'S TRIAL AMENDMENT TO PLAINTIFF'S SECOND
AMENDED PETITION—Filed June 5, 1964**

To the Honorable Judge of Said Court:

Now comes Edwin A. Walker, plaintiff in the above styled and numbered cause, and with leave of Court, files this, his trial amendment to his Second Amended Petition herein.

At page 6, Paragraph II, after subparagraph 25, add the following:

Plaintiff states that, of the above language, when taken in proper context with the entire news releases by the defendant, the following specific words are false, defamatory and libelous per se:

From release of October 2, 1962:

"Walker, who Sunday led a charge of students against federal marshals on the Ole Miss campus."

From news release of October 2, 1962; subparagraph 4:

"... the crowd ... charged federal marshals." ...

From page 5:

"The crowd welcomed Walker." ...

From page 6:

"One unidentified man queried Walker as he approached the group 'General, will you lead us to the steps'".

[File endorsement omitted]

From subparagraph 7:

"I observed Walker as he loosened his tie and shirt and nodded 'Yes' without speaking."

From subparagraph 8:

"Walker assumed command of the crowd, which I estimated at one thousand." * * *

[fol. 38] From subparagraph 9:

"Two men took Walker by the arms and they headed for the Lyceum and the federal marshals." * * *

From subparagraph 10:

"This march toward tear gas and the some two hundred marshals was more effective than the previous attempts." * * *

From subparagraph 11:

"We were met with a heavy barrage of tear gas about 75 yards from the Lyceum steps and went a few feet farther when we had to turn back."

Plaintiff alleges that the above statements of fact in defendant's news releases falsely accused plaintiff of crimes under the criminal statutes of the United States of America, and thus constitute libel per se.

C. J. Watts, Attorney for Plaintiff.

[fol. 39]

IN THE DISTRICT COURT OF TARRANT COUNTY, TEXAS

17TH JUDICIAL DISTRICT

No. 31,741-C

[Title omitted]

DEFENDANT'S MOTION AT CLOSE OF PLAINTIFF'S EVIDENCE FOR
INSTRUCTED VERDICT AND RULING THEREON—June 15, 1964

To the Honorable Judge of Said Court:

Comes now the defendant, Associated Press, at the close of the plaintiff's evidence and after the plaintiff has announced that he has rested, and moves the Court to instruct a verdict in favor of the defendant and against the plaintiff, and for grounds therefor would show the Court as follows, to-wit:

I.

The alleged libel in this case as set forth under the rulings of the Court with specific certainty and plaintiff's trial amendment to plaintiff's second amended petition is based on excerpts from an article written by Van Savell of the Associated Press on or about October 3, 1962, it being plaintiff's proof that such article was published in the Star-Telegram in Fort Worth, Tarrant County, Texas, on or about such date.

The alleged libelous excerpts from such article are as follows:

"Walker, who Sunday led a charge of students against Federal marshals on the Ole Miss campus".

With respect to this allegation the defendant would show to the Court that the proof thus far adduced by the plaintiff shows that such a statement is a statement of an occurrence [fol. 40] that occurred on the Ole Miss campus on the night of September 30, 1962. That by plaintiff's own testimony and from the majority of his witnesses there has been abso-

lute testimony to the effect that the plaintiff Walker went towards the Federal Marshals at a stage or stages during the night of September 30, 1962, followed by a considerable number of people varying anywhere from five to one thousand; that therefore the use of the term "charge" as carried in such article and upon which relief is sought is no more than a comment and according to the evidence is a fair comment under the statutes of the state of Texas as to the actions of the plaintiff on that occasion. It is shown by the entire and substantial proof on the part of the plaintiff that an occurrence such as described in said article did occur, and since same is descriptive of the events which occurred on the campus, then same is a comment and not a statement of fact insofar as the word "charge" is concerned, and therefore privileged under the statutes of the state of Texas as a fair comment on the activities of a public figure.

That the evidence shows without any doubt and from all the witnesses who have testified with respect thereto that the plaintiff Walker was a public figure on the occasion in question and enjoyed that title and description on the date and day in question.

II.

That the evidence is without dispute that the subject matter of the riot on the campus of Ole Miss university on September 30, 1962, was in connection with the integration problem which is shown by the evidence to have been a [fol. 41] problem of National import and National interest or perhaps International interest, and therefore the publication as set forth in the Star-Telegram coming from the Associated Press is privileged and is a fair comment on the happenings or actions of a public figure and related to a national problem or a matter of National public interest.

III.

With respect to the allegation number two in plaintiff's trial amendment plaintiff says over United Press wires of October 2, 1962, said paragraph four " . . . crowd . . . "

charged Federal Marshals." With respect thereto the defendant would show to the Court that the evidence so far adduced by the plaintiff, and from plaintiff's witnesses only, show without doubt that a crowd of some character as to numbers did in fact charge the Marshals or charge in the direction of the Marshals on the night in question, reference being specifically made to plaintiff's witnesses: Talmage Witt, also to plaintiff's witness Richard Sweat, General Walker, David Channell, Cecil Holland, Robert Lee Watkins, Alvis McRhea, Harold Schneider, Henry Edwards, Donald Jackson, and Danny Lee Hunter, all of whom testified a crowd in which Walker was a participant, varying in size, made some character of movement toward the Marshals on the night in question after the entry on to the campus by General Walker and after he had conferred with a number of the students on the campus. As a matter of fact at least 15 of the witnesses have testified thus far that they were in the crowd that went with Walker toward the flag pole even though some of them have testified that only four or five or six were in the group.

[fol. 42]

IV.

With respect to the next allegation on the part of the plaintiff as to a libelous article, he has alleged as follows from page 5: "The group welcomed Walker".

This is a comment, a fair comment, based on the testimony of all the witnesses in this case and constitutes an interpolation of the scrivener as to his interpretation of the actions of the crowd in connection with the welcoming of General Walker. It is further shown that on the occasion in question a group of considerable size, varying according to the testimony from 100 to 1,000 or more, crowded around General Walker at the time he entered the campus shouting such things as "Here's General Walker; here comes General Walker; here is our leader, Lead us, lead us; here is our leader", being excerpts from the testimony thus far adduced from plaintiff's witnesses as well as from the plaintiff himself.

V.

Plaintiff alleges as a part of the alleged libel; "One identified man queried Walker as he approached the crowd 'General, will you lead us up the steps'?"

The testimony is undisputed that this crowd—as a matter of fact the plaintiff himself testified that that was said to him at some time shortly after he arrived on the campus, and therefore has been conceded to be true on the part of the plaintiff.

VI.

The plaintiff has pled an excerpt from sub-paragraph 7 as follows: "I observed Walker as he loosened his tie and shirt and nodded 'yes' without speaking".

[fol. 43] With respect thereto defendant would show that the evidence shows that such an incident did occur, perhaps not in that context in which it was used, but could be nothing more than an expression or an opinion or a comment or an interpretation wherein the scrivener said that he nodded "yes" without speaking, such being an interpretation of an event through the eyes of the person who was writing the article.

VII.

The next article claimed to be libelous per se on the part of the plaintiff is from sub-paragraph 8, which reads as follows: "Walker assumed command of the crowd which I estimated at 1,000".

The defendant would show to the Court that this is no more than an estimate or an opinion on the part of the scrivener and has been confirmed by at least four of plaintiff's witnesses with respect to the numbers, and so far as the statement "Walker assumed command of the crowd", same is but a comment and an opinion on the part of the scrivener, privileged under the laws of the state of Texas as being a comment with respect to a public figure concerning a public matter.

VIII.

Plaintiff has alleged as a part of the libel: "Two men took Walker by the Arms and they headed for the Lyceum building and the Federal Marshals".

With respect thereto defendant would show the Court that under no circumstances could any matter such as that be the subject of a libel. It does not charge any act that would be unlawful nor any other matter which could have any effect other than be distasteful to one who does not [fol. 44] wish to be taken by the arms, and for that matter it is shown by at least one of plaintiff's witnesses that Walker at one time was taken by the arms when he was walking in the direction of the Lyceum building.

IX.

The next statement alleged by plaintiff to be libelous is as follows: "This march towards tear gas and the some 200 Marshals was more effective than the previous attempts".

With respect thereto defendant would show to the Court same could not be classed as anything other than a comment and is therefore privileged under the laws and statutes of the state of Texas in that same had to do with a public figure concerning a matter of public interest to the general public.

X.

Plaintiff alleges as a part of the alleged libel: "We were met with a heavy barrage of tear gas about 75 yards from the Lyceum steps and went a few feet farther when we had to turn back".

For the reason that such statement does not constitute any libel with respect to the plaintiff in this case, as being a comment from one who is alleged to have been present, and is a comment and a statement from the writer as to what his view of the situation was at the time in question.

XI.

For the further reason that since it has been shown by the testimony in this case that the article written by Van Savell and upon which this alleged libel is based is privileged under the laws of the state of Texas for the reasons set forth herein, and since no malice has either been shown or attempted to be shown and in fact no evidence whatsoever of malice having been introduced, the Court should [fol. 45] instruct a verdict in favor of the defendant and against the plaintiff.

XIII:

In the alternative the defendant would further show to the Court that the matters complained of here, after the amendment of the Texas statutes, are absolutely privileged and certainly in the absence of actual malice constitute no grounds for a cause of action. Also malice under Texas law cannot be inferred from the articles themselves since they relate to fair comment according to all of the evidence.

Respectfully submitted,

Cantey, Hanger, Gooch, Cravens & Scarborough, By
Sloan B. Blair.

Overruled, 6-15-64. Chas. J. Murray, Judge

[fol. 46]

IN THE 17TH JUDICIAL DISTRICT COURT OF
TARRANT COUNTY, TEXAS
No. 31741-C

[Title omitted]

PLAINTIFF'S REQUESTED DEFINITION AND DENIAL THEREOF—
June 18, 1964

To said Honorable Court:

Plaintiff requests the Court, prior to submission of its charge, to submit the following definition:

By the term "led a charge" as used herein, is meant to conduct, direct and govern, as a chief or commander, implying authority, an act of rushing upon or towards an enemy or opponent with the determination to close with him, in an impetuous onset or attack.

Respectfully submitted,

Wm. Address, Jr., Of Counsel for Plaintiff.

Denied: June 18, 1964. Chas. J. Murray

[File endorsement omitted]

[fol. 47]

IN THE DISTRICT COURT OF TARRANT COUNTY, TEXAS

17TH JUDICIAL DISTRICT

No. 31,741-C

[Title omitted]

DEFENDANT'S MOTION AT CLOSE OF ALL EVIDENCE FOR
INSTRUCTED VERDICT AND RULING THEREON—June 18, 1964

To the Honorable Judge of Said Court:

Comes now the defendant, Associated Press, after both the plaintiff and defendant had rested, and moves the Court to instruct a verdict in favor of the defendant and against the plaintiff, and for grounds therefor would show the Court as follows, to-wit:

I.

The alleged libel in this case as set forth under the rulings of the Court with specific certainty and plaintiff's trial amendment to plaintiff's second amended petition is based on excerpts from an article written by Van Savell of the Associated Press on or about October 3, 1962, it being plaintiff's proof that such article was published in the Star-Telegram in Fort Worth, Tarrant County, Texas, on or about such date.

The alleged libelous excerpts from such article are as follows:

"Walker, who Sunday led a charge of students against Federal Marshals on the Ole Miss campus".

With respect to this allegation the defendant would show to the Court that the proof thus far adduced by the plaintiff shows that such a statement is a statement of an occurrence [fol. 48] that occurred on the Ole Miss campus on the night of September 30, 1962. That by plaintiff's own testimony and from the majority of his witnesses there has been abso-

lute testimony to the effect that the plaintiff Walker went towards the Federal Marshals at a stage or stages during the night of September 30, 1962, followed by a considerable number of people varying anywhere from five to one thousand; that therefore the use of the term "charge" as carried in such article and upon which relief is sought is no more than a comment and according to the evidence is a fair comment under the statutes of the state of Texas as to the actions of the plaintiff on that occasion. It is shown by the entire and substantial proof on the part of the plaintiff that an occurrence such as described in said article did occur, and since same is descriptive of the events which occurred on the campus, then same is a comment and not a statement of fact insofar as the word "charge" is concerned, and therefore privileged under the statutes of the state of Texas as a fair comment on the activities of a public figure.

That the evidence shows without any doubt and from all the witnesses who have testified with respect thereto that the plaintiff Walker was a public figure on the occasion in question and enjoyed that title and description on the date and day in question.

II.

That the evidence is without dispute that the subject matter of the riot on the campus of Ole Miss university on September 30, 1962, was in connection with the integration problem which is shown by the evidence to have been a [fol. 49] problem of National import and National interest or perhaps International interest, and therefore the publication as set forth in the Star-Telegram coming from the Associated Press is privileged and is a fair comment on the happenings or actions of a public figure and related to a national problem or a matter of National public interest.

III.

With respect to the allegation number two in plaintiff's trial amendment plaintiff says over United Press wires of

October 2, 1962, said paragraph four " . . . crowd . . . charged Federal Marshals." With respect thereto the defendant would show to the Court that the evidence so far adduced by the plaintiff, and from plaintiff's witnesses only, show without doubt that a crowd of some character as to numbers did in fact charge the Marshals or charge in the direction of the Marshals on the night in question, reference being specifically made to plaintiff's witnesses: Talmage Witt, also to plaintiff's witness Richard Sweat, General Walker, David Channell, Cecil Holland, Robert Lee Watkins, Alvis McRhea, Harold Schneider, Henry Edwards, Donald Jackson, and Danny Lee Hunter, all of whom testified a crowd in which Walker was a participant, varying in size, made some character of movement toward the Marshals on the night in question after the entry on to the campus by General Walker and after he had conferred with a number of the students on the campus. As a matter of fact at least 15 of the witnesses have testified thus far that they were in the crowd that went with Walker toward the flag pole even though some of them have testified that only four or five or six were in the group.

[fol. 50]

IV.

With respect to the next allegation on the part of the plaintiff as to a libelous article, he has alleged as follows from page 5: "The group welcomed Walker".

This is a comment, a fair comment, based on the testimony of all the witnesses in this case and constitutes an interpolation of the scrivener as to his interpretation of the actions of the crowd in connection with the welcoming of General Walker. It is further shown that on the occasion in question a group of considerable size, varying according to the testimony from 100 to 1,000 or more, crowded around General Walker at the time he entered the campus shouting such things as "Here's General Walker; here comes General Walker; here is our leader. Lead us, lead us; here is our leader", being excerpts from the testimony thus far adduced.

from plaintiff's witnesses as well as from the plaintiff himself.

V.

Plaintiff alleges as a part of the alleged libel: "One identified man queried Walker as he approached the crowd 'General, will you lead us up the steps'?"

The testimony is undisputed that this crowd—as a matter of fact the plaintiff himself testified that that was said to him at some time shortly after he arrived on the campus, and therefore has been conceded to be true on the part of the plaintiff.

VI.

The plaintiff has pled an excerpt from sub-paragraph 7 as follows: "I observed Walker as he loosened his tie and shirt and nodded 'yes' without speaking".

[fol. 51] With respect thereto defendant would show that the evidence shows that such an incident did occur, perhaps not in that context in which it was used, but could be nothing more than an expression or an opinion or a comment or an interpretation wherein the scrivener said that he nodded 'yes' without speaking, such being an interpretation of an event through the eyes of the person who was writing the article.

VII.

The next article claimed to be libelous per se on the part of the plaintiff is from sub-paragraph 8, which reads as follows: "Walker assumed command of the crowd which I estimated at 1,000".

The defendant would show to the Court that this is no more than an estimate or an opinion on the part of the scrivener and has been confirmed by at least four of plaintiff's witnesses with respect to the numbers, and so far as the statement "Walker assumed command of the crowd", same is but a comment and an opinion on the part of the scrivener, privileged under the laws of the state of Texas as

being a comment with respect to a public figure concerning a public matter.

VIII.

Plaintiff has alleged as a part of the libel: "Two men took Walker by the Arms and they headed for the Lyceum building and the Federal Marshals".

With respect thereto defendant would show the Court that under no circumstances could any matter such as that be the subject of a libel. It does not charge any act that would be unlawful nor any other matter which could have any effect other than be distasteful to one who does not wish to be [fol. 52] taken by the arms, and for that matter it is shown by at least one of plaintiff's witnesses that Walker at one time was taken by the arms when he was walking in the direction of the Lyceum building.

IX.

The next statement alleged by plaintiff to be libelous is as follows: "This march towards tear gas and the some 200 Marshals was more effective than the previous attempts".

With respect thereto defendant would show to the Court same could not be classed as anything other than a comment and is therefore privileged under the laws and statutes of the state of Texas in that same had to do with a public figure concerning a matter of public interest to the general public.

X.

Plaintiff alleges as a part of the alleged libel: "We were met with a heavy barrage of tear gas about 75 yards from the Lyceum steps and went a few feet farther when we had to turn back".

For the reason that such statement does not constitute any libel with respect to the plaintiff in this case, as being a comment from one who is alleged to have been present, and is a comment and a statement from the writer as to what his view of the situation was at the time in question.

XI.

For the further reason that since it has been shown by the testimony in this case that the article written by Van Savell and upon which this alleged libel is based is privileged under the laws of the state of Texas for the reasons set forth herein, and since no malice has either been shown or attempted to be shown and in fact no evidence whatsoever of malice having been introduced, the Court [fol. 53] should instruct a verdict in favor of the defendant and against the plaintiff.

XII.

In the alternative the defendant would further show to the Court that the matters complained of here, after the amendment of the Texas statutes, are absolutely privileged and certainly in the absence of actual malice constitute no grounds for a cause of action. Also malice under Texas law cannot be inferred from the articles themselves since they relate to fair comment according to all of the evidence.

Respectfully submitted,

Cantey, Hanger, Gooch, Cravens & Scarborough, By
Sloan B. Blair, Attorneys for Defendant.

Overruled 6-18-64, Chas. J. Murray, Judge.

[fol. 54]

IN THE DISTRICT COURT OF TARRANT COUNTY, TEXAS

17TH JUDICIAL DISTRICT

No. 31,741-C

[Title omitted]

DEFENDANT'S OBJECTIONS AND EXCEPTIONS TO THE COURT'S
MAIN CHARGE AND RULING THEREON—June 18, 1964

To the Honorable Judge of Said Court:

Comes now the defendant, Associated Press, after the preparation of the Court's main charge to the jury, and within a reasonable time prior to the submission of the same to the jury, and makes and takes the following objections and exceptions thereto:

I.

Defendant objects and excepts to the Court's definition of "fair comment" for the reason that same should contain the statutory language "concern published for general information", which said language should be included after the words "General public interest".

II.

Defendant objects and excepts to special issue No. 1 for the reason that the statement inquired about is a comment rather than a fact as a matter of law, and as submitted is a comment on the weight of the evidence and infers that said activity was libelous per se rather than submitting the same to the jury to so determine.

III.

Defendant objects and excepts to special issue No. 4 and the definition thereof for each and all of the following [fol. 55] reasons:

(a) There is no evidence to support the submission of such issue;

(b) There is insufficient evidence to support the submission of such issue;

(c) Neither the issue nor the definition informs the jury that malice cannot be inferred from the publication itself, which is a necessary element of such definition or instruction;

(d) Such issue as submitted does not limit the jury to malice which may have existed at the time of the making of the publications sued upon.

IV.

Defendant objects and excepts to special issue No. 5 for the reason that the statement inquired about is a comment rather than a fact as a matter of law, and as submitted is a comment on the weight of the evidence and infers that said activity was libelous per se rather than submitting the same to the jury to so determine.

V.

Defendant objects and excepts to special issue No. 8 and the definition thereof for each and all of the following reasons:

(a) There is no evidence to support the submission of such issue;

(b) There is insufficient evidence to support the submission of such issue;

(c) Neither the issue nor the definition informs the jury that malice cannot be inferred from the publication itself, [fol. 56] which is a necessary element of such definition or instruction;

(d) Such issue as submitted does not limit the jury to malice which may have existed at the time of the making of the publications sued upon.

VI.

Defendant objects and excepts to special issue No. 9 on damages for the following reasons:

(a) There is no evidence to support the submission of such an issue;

(b) There is insufficient evidence to support the submission of said issue;

(c) The issue as submitted and the instructions in connection therewith would permit the jury to award damages resulting from statements found by the jury to be fair comment and found by the jury to have been made in good faith in reference to a matter in which the defendant had a duty to report to its members and thence to the public, and said issue should be corrected so as to instruct the jury that no damages can be awarded for statements that are fair comment or made in good faith in reference to a matter in which the defendant has a duty to report to its members and thence to the public.

VII.

Defendant objects and excepts to the submission of special issue No. 10 on exemplary damages because there is no evidence or insufficient evidence to support a finding of exemplary damages.

[fol. 57]

VIII.

Defendant specially objects and excepts to the submission of special issue No. 11 on exemplary damages because there is no evidence or insufficient evidence that plaintiff is entitled to exemplary damages.

IX.

Defendant objects and excepts to the Court's charge as a whole because the same is tantamount to instructing the jury that the statements quoted in special issues Nos. 1 and 5 are libelous or are libelous per se, and said charge does not contain any issues with the burden of proof upon the plaintiff inquiring in substance whether either or both of said statements were in fact libelous or libelous per se or would have been understood by an average reader to be libelous, with appropriate definitions and instructions with respect to the meaning of the term libelous.

Respectfully submitted,

Cantey, Hanger, Gooch, Cravens & Scarborough, By
Sloan B. Blair.

Overruled 6-18-64, Chas. J. Murray, Judge.

[fol. 58]

IN THE DISTRICT COURT OF TARRANT COUNTY, TEXAS

17th JUDICIAL DISTRICT

No. 31,741-C

[Title omitted]

CHARGE OF THE COURT—Filed June 18, 1964

Ladies and Gentlemen of the Jury:

This case is submitted to you in the form of questions which are called special issues. You are to answer these questions by unanimous consent.

Do not let bias, prejudice, sympathy, resentment, or any other such emotion play any part in your deliberations.

[File endorsement omitted]

During your deliberations be careful not to mention or discuss any personal knowledge you may have about the facts in the case. *Your duty is to answer these questions from the evidence you have heard in this trial and from that alone.*

Do not speculate on matters not shown by the evidence, and about which you are not asked any questions. Remember that you cannot guess your way to a just and correct verdict.

Do not return a quotient verdict, by adding together figures, dividing by the number of jurors, and agreeing to be bound by the result.

Do not do any trading on your answers—that is, some of you agreeing to answer certain questions one way if others will agree to answer other questions another way.

Do not decide who you think should win and then try to answer the questions accordingly. If you do this your verdict will be worthless.

You are the sole judges of the credibility of the witnesses and the weight to be given their testimony, but in matters of law you must be governed by the instructions in this charge.

The following definitions are given you by the Court. Whenever any of the terms so defined are used in any of the special issues, you will refer to the appropriate definition and be guided thereby in considering your answer:

By the term Preponderance of the Evidence is meant the greater weight and degree of the credible evidence before you.

[fol. 59]

Definitions

In answer to Special Issue No. 1 you are instructed that by the term “led” is meant activities by a person who directs, moves to action, or encourages in some action or movement, and that by the term “charge” is meant a movement toward the marshals, or a group or body of people moving toward an objective.

In answering the issues in this charge in which the term “substantially true” is used, you are instructed that in

order for a statement to be "substantially true" it is not necessary that the exact facts or the most minute details of the plaintiff's activities be completely accurate. Mere inaccuracies not affecting the substance of the report of plaintiff's activities are immaterial. You are further instructed that in answering special issues in which the term "substantially true" is used that the publication must be considered as a whole, giving to all the words contained therein (except those hereinabove defined for you) their ordinary meaning as read and understood by the average reader.

In answering the issues in these instructions in which the term "fair comment" is used, you are instructed that the interest of the public requires that all acts and matters of a public nature, and of public concern published for general information may be freely published and discussed with reasonable comments thereon. You are further instructed that by said term is meant a statement which represents the honest opinion of the writer and constitutes reasonable inferences to be drawn from the attendant facts and circumstances whether literally true or not, or whether all reasonable persons would agree with the opinions or conclusions based thereon.

Special Issue No. 1:

Question: Do you find from a preponderance of the evidence that the statement "Walker, who Sunday led a charge of students against Federal marshals on the Ole Miss campus" was substantially true?

Answer "Yes" or "No".

Answer: No

Special Issue No. 2:

Question: Do you find from a preponderance of the evidence that the statement "Walker, who Sunday led a charge of students against Federal marshals on the Ole Miss Campus", complained of by plaintiff, constitutes fair

comment describing the plaintiff's activities on or about September 30, 1962, at the places described in the evidence and under the then attendant circumstances?

Answer "Yes" or "No".

Answer: No

[fol. 60] *Special Issue No. 3:*

Question: Do you find from a preponderance of the evidence that the statement inquired about in special issue No. 1 was made in good faith in reference to a matter in which the defendant had a duty to report to its members and thence to the public?

Answer "Yes" or "No".

Answer: No

Special Issue No. 4:

Question: Do you find from a preponderance of the evidence that in publishing the statement set forth in special issue No. 1 the defendant, Associated Press, was actuated by malice as that term is hereinafter defined.

In connection with the above issue, you are instructed that by the term "malice" is meant ill will, bad or evil motive, or that entire want of care which would raise the belief that the act or omission complained of was the result of a conscious indifference to the right or welfare of the person to be affected by it.

Answer "Yes" or "No".

Answer: Yes

Special Issue No. 5:

Question: Do you find from a preponderance of the evidence that the statement "Walker assumed command of the crowd" was substantially true?

Answer "Yes" or "No".

Answer: No

Special Issue No. 6:

Question: Do you find from a preponderance of the evidence that the statement "Walker assumed command of the crowd" complained of by plaintiff, constitutes fair comment describing plaintiff's activities on or about September 30, 1962, at the places described in the evidence and under the then attendant circumstances?

Answer "Yes" or "No".

Answer: No

Special Issue No. 7:

Question: Do you find from a preponderance of the evidence that the statement inquired about in special issue No. 5 was made in good faith in reference to a matter in which the defendant had a duty to report to its members and thence to the public?

Answer "Yes" or "No".

Answer: No

[fol. 61] *Special Issue No. 8:*

Question: Do you find from a preponderance of the evidence that in publishing the statement set forth in special issue No. 5 the defendant, Associated Press, was actuated by malice as that term is hereinafter defined?

In connection with the above issue, you are instructed that by the term "malice" is meant ill will, bad or evil motive, or that entire want of care which would raise the belief that the act or omission complained of was the result of a conscious indifference to the right or welfare of the person to be affected by it.

Answer "Yes" or "No".

Answer: Yes

Special Issue No. 9:

Question: If you have answered either special issue No. 1 or special issue No. 5 "No", then answer:

What sum of money, if paid now in cash, do you find from a preponderance of the evidence would fairly and reasonably compensate the plaintiff for the damages, if any, sustained by him as a direct and proximate result of the statements inquired about in special issues Nos. 1 and 5?

In connection with this issue you are instructed that you may only award damages, if any, for statements inquired about herein which you have found to be false.

In connection with the foregoing issue you are instructed that you may take into consideration such damages, if any, to the reputation of the plaintiff and such mental anguish, if any, and humiliation, if any, and embarrassment, if any, which plaintiff may have sustained directly and proximately solely as a result of the statements hereinabove set forth, if you have found the same to be false.

Answer in dollars and cents, if any.

Answer: \$500,000.00

Special Issue No. 10:

If you have answered either special issue No. 4 or special issue No. 8 "Yes", then answer:

Question: Do you find from a preponderance of the evidence that this is a case in which exemplary damages should be awarded to plaintiff?

In connection with the above issue you are instructed that the term "Exemplary damages" as used herein means a sum of money awarded as a punishment for any malice, if any, you have found to exist in this case. "Exemplary damages", if any are allowed, are to be no part of the damages which may be allowed as compensation (if compensation has been allowed) but only in the nature of a penalty allowed by law : t your discretion, and any amount [fol. 62] which you find hereunder, if you see fit to make such a finding, should be reasonably proportionate to the actual damages, if any, you may allow plaintiff herein.

Answer "Yes" or "No".

Answer: Yes

Special Issue No. 11:

If you have answered the above special issue No. 10 "Yes", and only in that event, then answer:

Question: From a preponderance of the evidence, what amount of money, if any, do you find should be awarded to plaintiff as exemplary damages?

Answer in dollars and cents, if any.

Answer: \$300,000.00

Chas. J. Murray, Judge presiding.

IN THE DISTRICT COURT OF TARRANT COUNTY

VERDICT OF THE JURY—June 19, 1964

We, the jury, have answered the above and foregoing special issues, as herein indicated, and herewith return same into court as our verdict.

Waverly S. Johnson, Foreman.

[File endorsement omitted]

[fol. 63]

IN THE DISTRICT COURT OF TARRANT COUNTY, TEXAS

17TH JUDICIAL DISTRICT

No. 31,741-C

[Title omitted]

DEFENDANT'S MOTION TO DISREGARD THE JURY'S VERDICT AND
FOR JUDGMENT NOTWITHSTANDING SAID VERDICT—Filed
June 29, 1964

To the Honorable Judge of Said Court:

Now comes the defendant, Associated Press, and moves the Court to set aside and disregard the verdict of the jury and each and every finding therein, and to render judgment for the defendant and against the plaintiff notwithstanding such verdict, and as grounds therefor would respectfully show as follows:

1.

The jury's negative finding in response to Special Issue No. 1 should be set aside and disregarded because the evidence conclusively established as a matter of law that the statement "Walker, who Sunday led a charge of students against Federal marshals on the Ole Miss campus" was substantially true.

2.

The jury's negative finding in response to Special Issue No. 2 should be set aside and disregarded because the evidence conclusively established as a matter of law that the statement quoted in the preceding paragraph, and in said Special Issue No. 2, constituted a fair comment about a matter of public concern published for general informa-

[File endorsement omitted]

tion concerning the plaintiff's activities at the time and place involved.

[fol. 64]

3.

The jury's negative finding in response to Special Issue No. 3 should be set aside and disregarded because the evidence conclusively established as a matter of law that the statement inquired about therein, as quoted in paragraph 1. of this motion, was made by the defendant in good faith in reference to a matter in which the defendant had a duty to report to its members and thence to the public.

4.

The jury's affirmative answer to Special Issue No. 4 on malice should be set aside and disregarded because there is no evidence of any malice on the part of this defendant in publishing the statement referred to in said Special Issue No. 4.

5.

Since the statement "Walker, who Sunday led a charge of students against Federal marshals on the Ole Miss campus" constituted as a matter of law, under all of the evidence, fair comment about a matter of public concern published for general information, such statement was and is absolutely privileged under the provisions of Article 5432 of the Texas Statutes; or, in the alternative, said statement was qualifiedly privileged under the provisions of said Statute, and, there being no evidence of malice, judgment should be rendered for defendant and against the plaintiff.

6.

Since the statement quoted in the preceding paragraph was as a matter of law, under all of the evidence, made in good faith by the defendant in reference to a matter in which the defendant had a duty to report to its members and thence to the public, such statement was privileged,

and, there being no evidence of malice, judgment should be rendered for defendant and against the plaintiff.

[fol. 65]

7.

The jury's negative finding in response to Special Issue No. 5 should be set aside and disregarded because the evidence conclusively established as a matter of law that the statement, "Walker assumed command of the crowd" was substantially true.

8.

The jury's negative finding in response to Special Issue No. 6 should be set aside and disregarded because the evidence conclusively established as a matter of law that the statement quoted in the preceding paragraph, and in said Special Issue No. 6, constituted a fair comment about a matter of public concern published for general information concerning the plaintiff's activities at the time and place involved.

9.

The jury's negative finding in response to Special Issue No. 7 should be set aside and disregarded because the evidence conclusively established as a matter of law that the statement inquired about therein, as quoted in paragraph 7 of this motion, was made by the defendant in good faith in reference to a matter in which the defendant had a duty to report to its members and thence to the public.

10.

The jury's affirmative answer to Special Issue No. 8 on malice should be set aside and disregarded because there is no evidence of any malice on the part of this defendant in publishing the statement referred to in said Special Issue No. 8.

11.

Since the statement "Walker assumed command of the crowd" constituted as a matter of law, under all of the evidence, fair comment about a matter of public concern published for general information, such statement was and is absolutely privileged under the provisions of Article 5432 of the Texas Statutes; or, in the alternative, said statement was qualifiedly privileged under the provisions [fol. 66] of said Statute, and, there being no evidence of malice, judgment should be rendered for defendant and against the plaintiff.

12.

Since the statement quoted in the preceding paragraph was as a matter of law, under all of the evidence, made in good faith by the defendant in reference to a matter in which the defendant had a duty to report to its members and thence to the public, such statement was privileged, and, there being no evidence of malice, judgment should be rendered for defendant and against the plaintiff.

13.

There is no evidence whatever of damages, and therefore the jury's answer to Special Issue No. 9 has no support in the evidence, and said answer should be set aside and disregarded.

14.

There is no evidence to support the jury's answer to Special Issue No. 10 on exemplary damages, and said answer should therefore be disregarded and set aside.

15.

There is no evidence to support the jury's answer to Special Issue No. 11 on exemplary damages, and said answer should therefore be disregarded.

16.

Notwithstanding the verdict of the jury, the Court should render judgment for the defendant because any judgment awarding money damages to plaintiff against defendant would constitute a restraint and deterrent to the publication of news and a restraint, deterrent and denial of the freedom of the press as guaranteed to defendant by the First and Fourteenth Amendments to the Constitution of the United States of America.

[fol. 67]

17.

Notwithstanding the verdict of the jury, the Court should render judgment for the defendant because any judgment awarding money damages to plaintiff against defendant would constitute a restraint and deterrent to the publication of news and a restraint, deterrent and denial of the freedom of the press as guaranteed to defendant by Article 1, Paragraph 8, of the Constitution of the State of Texas.

Wherefore, defendant Associated Press respectfully prays that the Court set aside and disregard the verdict of the jury and each and every finding therein, and that judgment be here rendered notwithstanding said verdict, that plaintiff take nothing by his suit, and that defendant go hence with its costs without day; and defendant prays for such further and additional relief, at law and in equity, to which it may be entitled.

Cantey, Hanger, Gooch, Cravens and Scarborough,
By Sloan B. Blair, 1800 First National Building,
Fort Worth 2, Texas, Attorneys for defendant
Associated Press.

[fol. 67-A]

LETTER DATED JULY 29, 1964 FROM JUDGE MURRAY
TO COUNSEL

CHAS. J. MURRAY

DISTRICT JUDGE

17TH JUDICIAL DISTRICT OF TEXAS

CIVIL COURTS BUILDING

FORT WORTH 2, TEXAS

July 29, 1964

Mr. C. J. Watts, Attorney
219 Couch Drive
Oklahoma City, Oklahoma

Mr. William Andress, Jr., Attorney
627 Fidelity Union Life Building
Dallas 1, Texas

Mr. J. A. Gooch, Attorney
1800 First National Bank Building
Fort Worth, Texas

Gentlemen:

I am entering judgment for the plaintiff on the jury verdict as to special issues one, two, three, five, six, seven and nine, and judgment for the defendant as to issues four, eight, ten and eleven.

At the time the charge to the jury was being prepared, you will recall I expressed the opinion that the alleged libelous statements contained in special issues one and five were statements of fact and not opinion, and, at least as to the statement set out in issue number one, was a charge of a commission of a crime. I submitted the defense of truth as to the statements, and the jury found that they were not substantially true. I believe there is evidence to support these findings. I now have some doubt as to whether I should have submitted the statement,

"Walker assumed command of the crowd," because it does not accuse Walker of the commission of a crime. However, in view of my decision as to special issue number one, this is immaterial.

I submitted issues as to fair comment and good faith (despite my then expressed opinion that they did not constitute defenses to a statement of fact charging the plaintiff with commission of a crime) so as to get jury findings and thus avoid a new trial in the event an appellate court disagreed with my conclusions. Since the jury answered issues two, three, six and seven as they did, I concur with these answers as a matter of law.

[fol. 67-B] Turning now to issues four, eight, ten and eleven, I find there is no evidence to support the jury's answers that there was actual malice by Associated Press in publishing the stories of October 2 and 3, 1962. As you will recall, I also expressed doubt when the charge was being prepared as to whether I should even submit malice and did so only to get a jury finding as I did on the defendant's claimed defenses of fair comment and good faith.

Under Texas Law, the news stories complained of are not of themselves evidence of malice without further proof. Plaintiff claims that malice is shown by the failure of the Associated Press to check the story written by its young reporter, Van Savell, because there was a conflict between the story as written, and as related by Savell to Thomas, an AP employee in its Atlanta office. This alleged conflict related only to whether General Walker led a charge against the federal marshals *before* rather than *after* his speech to the students on the Confederate Monument. I fail to ascertain how the failure to check such a minor discrepancy could be construed as that *entire want of care* which would amount to a *conscious indifference* to the rights of plaintiff. Negligence, it may have been; malice, it was not. Moreover, the mere fact that AP permitted a young reporter to cover the story of the riot is not evidence of malice. Wisdom and good judgment do not necessarily come with age, nor are they necessarily denied

youth. In my opinion *New York Times vs. Sullivan*, 11 L. ed. 2nd 686; *Wortham-Carter Publishing Company vs. Littlepage*, 223 SW 1043 and *Fitzgarrald vs. Panhandle Publishing Company*, 228 SW 2nd 499, support these conclusions.

Plaintiff's urge that this case is comparable to *United Press International, Inc. vs. Mohs* (Eastland Court of Civil Appeals—unreported) decided on June 26, 1964. I do not agree. In the UPI case, Miller, the night editor of UPI, *knew* that another story had been written at and sent from his UPI office the same night as the second story found to be libelous. The first story contained no statement that Mohs had been ordered arrested and handcuffed; that Mohs had been caught lying or that he had been charged with any offense for landing his plane on White Rock Lake in Dallas. Between the time this first story was written and sent from UPI's office, someone in this office called the police headquarters and learned that as far as the police knew, Mohs had not been charged with any [fol. 67-C] offense. Miller himself, nor anyone in his office, made any attempt to verify the facts of the landing on the lake, other than the call to police headquarters, yet Miller then distributed the second story which said that Mohs had been arrested, handcuffed and charged with violation of a city ordinance for landing on the lake. None of this was true. This second story was based on information received from one DeHarrow. Miller knew the story (the first one) previously written in his office was materially different from the story related by DeHarrow (the second story). He had many reasons to question the truth of the story attributed to DeHarrow, but made no attempt to check it. The Eastland Court found that these facts raised jury issues "as to whether there was such a want of care as could raise the belief that his acts (and thus the acts of UPI) were the result of a conscious indifference to the rights of Mohs."

As I have stated above, in the Walker case the only discrepancy was whether Walker led a charge before or after

his speech on the monument, and not whether he did or did not lead a charge at all. This evidence falls short of that set out in the UPI vs. Mohs opinion.

Since I have determined that there is no actual malice in this case, the question arises as to whether the rule of New York Times vs. Sullivan (which prohibits a public official recovering damages for libel when there is no actual malice) should apply to a public figure such as plaintiff. If it does, then the entire jury verdict must be set aside, and judgment entered for defendant.

The evidence is undisputed that General Walker was a public figure at the time of the riot on the Old Miss Campus.

Freedom of the press is perhaps the most important protection against tyranny that we find in a free society. Without it, the public could not know whether one's right to speak, to worship his creator as he chooses or to enjoy a fair trial had been abridged. Americans everywhere depend on news media of all types to provide accurate information on the daily affairs of men and nations. This imposes a great duty and responsibility on the news gathering and distributing agencies of this country, and they should be protected to the extent necessary for them to properly function.

[fol. 67-D] However, I see no compelling reasons of public policy requiring additional defenses to suits for libel. Truth alone should be an adequate defense. The Sullivan case is limited, and I feel it should be limited, in its application to public officials. It does not apply to this case.

Jury findings as to issues four, eight, ten and eleven are set aside, and judgment will be entered for the plaintiff in the amount of \$500,000.00 and costs.

Very truly yours,

/s/ CHAS. J. MURRAY
Charles J. Murray, Judge
17th District Court

CJM:oc

[fol. 67-E]

IN THE DISTRICT COURT OF TARRANT COUNTY, TEXAS

17TH JUDICIAL DISTRICT

No. 31741-C

[Title omitted]

ORDER DIRECTING SUPPLEMENTAL TRANSCRIPT—

January 25, 1965

On this the 25 day of January, 1965, upon motion and suggestion of the defendant in the above case, and pursuant to the provisions of Rule 428, T.R.C.P., It Is Ordered and Directed by the Court that the Clerk prepare a Supplemental Transcript to be certified and transmitted by the Clerk to the Court of Civil Appeals, same to include this Order and the Court's letter of July 29, 1964, addressed to Mr. C. J. Watts, Mr. William Andress, Jr., and Mr. J. A. Gooch.

Signed and Entered the date first above written.

Chas. J. Murray, Judge presiding.

[fol. 67-F] Clerk's Certificate to Foregoing Papers (omitted in printing).

[fol. 68]

IN THE 17TH JUDICIAL DISTRICT COURT OF
TARRANT COUNTY, TEXAS
No. 31741-C

EDWIN A. WALKER

VS.

THE ASSOCIATED PRESS

JUDGMENT—August 3, 1964

On 8 June 1964 came on regularly to be heard the above numbered and entitled cause, wherein Edwin A. Walker is plaintiff and The Associated Press is defendant, the defendants Amon G. Carter, Jr., and Carter Publications, Inc., having theretofore been dismissed by the plaintiff, and all parties appeared by counsel and announced ready for trial, and thereupon came a jury of twelve good and lawful jurors who, being duly empanelled and sworn, did on 19 June 1964 return the following answers to the issues submitted:

Special Issue No. 1:

Question: Do you find from a preponderance of the evidence that the statement "Walker, who Sunday led a charge of students against Federal marshals on the Ole Miss campus" was substantially true?

Answer "Yes" or "No":

Answer: No

Special Issue No. 2:

Question: Do you find from a preponderance of the evidence that the statement "Walker, who Sunday led a charge of students against Federal marshals on the Ole

Miss Campus", complained of by plaintiff, constitutes fair comment describing the plaintiff's activities on or about September 30, 1962, at the places described in the evidence and under the then attendant circumstances?

Answer "Yes" or "No".

Answer: No

[fol. 69] *Special Issue No. 3:*

Question: Do you find from a preponderance of the evidence that the statement inquired about in special issue No. 1 was made in good faith in reference to a matter in which the defendant had a duty to report to its members and thence to the public?

Answer "Yes" or "No".

Answer: No

Special Issue No. 4:

Question: Do you find from a preponderance of the evidence that in publishing the statement set forth in special issue No. 1 the defendant, Associated Press, was actuated by malice as that term is hereinafter defined.

In connection with the above issue, you are instructed that by the term "malice" is meant ill will, bad or evil motive, or that entire want of care which would raise the belief that the act or omission complained of was the result of a conscious indifference to the right or welfare of the person to be affected by it.

Answer "Yes" or "No".

Answer: Yes

Special Issue No. 5:

Question: Do you find from a preponderance of the evidence that the statement "Walker assumed command of the crowd" was substantially true?

Answer "Yes" or "No".

Answer: No

Special Issue No. 6:

Question: Do you find from a preponderance of the evidence that the statement "Walker assumed command of the crowd" complained of by plaintiff, constitutes fair comment describing plaintiff's activities on or about September 30, 1962, at the places described in the evidence and under the then attendant circumstances?

Answer "Yes" or "No".

Answer: No

Special Issue No. 7:

Question: Do you find from a preponderance of the evidence that the statement inquired about in special issue No. 5 was made in good faith in reference to a matter in which the defendant had a duty to report to its members and thence to the public?

Answer "Yes" or "No".

Answer: No

[fol. 70] Special Issue No. 8:

Question: Do you find from a preponderance of the evidence that in publishing the statement set forth in special issue No. 5 the defendant, Associated Press, was actuated by malice as that term is hereinafter defined?

In connection with the above issue, you are instructed that by the term "malice" is meant ill will, bad or evil motive, or that entire want of care which would raise the belief that the act or omission complained of was the result of a conscious indifference to the right or welfare of the person to be affected by it.

Answer "Yes" or "No".

Answer: Yes

Special Issue No. 9:

Question: If you have answered either special issue No. 1 or special issue No. 5 "No", then answer:

What sum of money, if paid now in cash, do you find from a preponderance of the evidence would fairly and reasonably compensate the plaintiff for the damages, if any, sustained by him as a direct and proximate result of the statements inquired about in special issues Nos. 1 and 5?

In connection with this issue you are instructed that you may only award damages, if any, for statements, if any, inquired about herein which you have found to be false.

In connection with the foregoing issue you are instructed that you may take into consideration such damages, if any, to the reputation of the plaintiff and such mental anguish, if any, and humiliation, if any, and embarrassment, if any, which plaintiff may have sustained directly and proximately solely as a result of the statements hereinabove set forth, if you have found the same to be false.

Answer in dollars and cents, if any.

Answer: \$500,000.00

Special Issue No. 10:

If you have answered either special issue No. 4 or special issue No. 8 "Yes", then answer:

Question: Do you find from a preponderance of the evidence that this is a case in which exemplary damages should be awarded to plaintiff?

In connection with the above issue you are instructed that the term "Exemplary damages" as used herein means a sum of money awarded as a punishment for any malice, if any, you have found to exist in this case. "Exemplary damages", if any are allowed, are to be no part of the damages which may be allowed as compensation (if compensation has been allowed) but only in the nature of a penalty allowed by law at your discretion, and any amount which [fol. 71] you find hereunder, if you see fit to make such a finding, should be reasonably proportionate to the actual damages, if any, you may allow plaintiff herein.

Answer "Yes" or "No".

Answer: Yes

Special Issue No. 11:

If you have answered the above special issue No. 10 "Yes", and only in that event, then answer:

Question: From a preponderance of the evidence, what amount of money, if any, do you find should be awarded to plaintiff as exemplary damages?

Answer in dollars and cents, if any.

Answer: \$300,000.00

which said verdict was duly received by the Court and ordered filed; and the plaintiff filed a motion for judgment upon said verdict, and the defendant filed a motion to disregard the jury's verdict on each issue and for judgment notwithstanding said verdict, and after a hearing upon said motions and after considering the oral and written argument of the parties, the Court is of the opinion that the plaintiff is entitled to judgment upon the verdict of the jury in response to Special Issues Nos. 1, 2, 3, 5, 6, 7, and 9, but that there is no evidence to support the jury's answers to Special Issues Nos. 4, 8, 10, and 11, and that the motions of each of the parties should be granted partially as above set forth;

It is therefore ordered, adjudged, and decreed that the plaintiff Edwin A. Walker do have and recover of and from the defendant The Associated Press the sum of \$500,000.00, with interest at the rate of 6% per annum from this date until paid;

It is further ordered, adjudged, and decreed that the original defendants Amon G. Carter, Jr., and Carter Publications, Inc., owner, operator, and licensee of Radio Broadcast- [fol. 72] casting Stations WBAP-AM and WBAP-FM, and Television Station WBAP-TV, and The Fort Worth Star Telegram, be and they are hereby dismissed from this cause upon the motion of the plaintiff; and

It is further ordered, adjudged, and decreed that all of the costs hereof be taxed against the defendant The As-

sociated Press, for all of which judgment let all proper process issue.

Both parties excepted to adverse rulings.

Signed August 3, 1964.

Charles J. Murray, Judge.

Approved as to Form: Cantey, Hanger, Gooch, Cravens & Scarborough, By: S. B. Blair, Attorneys for Defendant.

Wm. Address, Jr.
Of Counsel for Plaintiff.

[fol. 73]

IN THE DISTRICT COURT OF TARRANT COUNTY, TEXAS

17TH JUDICIAL DISTRICT

No. 31741-C

[Title omitted]

DEFENDANT'S ORIGINAL MOTION FOR NEW
TRIAL—Filed August 12, 1964

To the Honorable Judge of Said Court:

Now comes the defendant Associated Press, after entry of judgment herein on August 3, 1964, and makes and files this its Original Motion for New Trial, and moves the Court to set aside the judgment heretofore rendered against it and to grant a new trial herein, upon the following grounds, to-wit:

1.

The Court erred in overruling the motion for instructed verdict made by defendant after plaintiff had rested.

2.

The Court erred in overruling the motion for instructed verdict made by defendant after both sides had rested.

[File endorsement omitted]

3.

The Court erred in overruling Grounds 1, 2, 3, 5, 6, 7, 8, 9, 11, 12, 13, 16 and 17 of defendant's motion to disregard the jury's verdict, and for judgment notwithstanding said verdict.

4.

The Court erred in overruling defendant's exceptions and objections to the Court's main charge.

5.

The Court erred in rendering judgment for plaintiff and against defendant for each and all of the following reasons:

[fol. 74]. (a) The jury's negative answer to Special Issue No. 1 is so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust, and there is insufficient evidence to support such answer;

(b) The jury's negative answer to Special Issue No. 2 is so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust, and there is insufficient evidence to support such answer;

(c) The jury's negative answer to Special Issue No. 3 is so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust, and there is insufficient evidence to support such answer;

(d) The jury's negative answer to Special Issue No. 4 is so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust, and there is insufficient evidence to support such answer;

(e) The jury's negative answer to Special Issue No. 6 is so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust, and there is insufficient evidence to support such answer;

(f) The jury's negative answer to Special Issue No. 7 is so against the great weight and preponderance of the evi-

dence as to be manifestly wrong and unjust, and there is insufficient evidence to support such answer;

(g) The jury's answer to Special Issue No. 9 on damages is so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust, and there is insufficient evidence to support such answer;

(h) The amount of damages found by the jury in answer to Special Issue No. 9, to-wit, the sum of \$500,000.00, is so grossly excessive as to be manifestly wrong and unjust and to show that the jury disregarded the evidence, and was in- [fol. 75] fluenced by passion, prejudice, or other improper motive.

Wherefore, defendant Associated Press prays that said judgment be set aside, and that defendant be granted a new trial herein.

Cantey, Hanger, Gooch, Cravens & Searborough, By
Sloan B. Blair, 1800 First National Bldg., Fort
Worth 2, Texas;

Attorneys for Defendant.

[fol. 76]

IN THE DISTRICT COURT OF TARRANT COUNTY, TEXAS

17TH JUDICIAL DISTRICT

No. 31741-C

[Title omitted]

ORDER GRANTING LEAVE TO FILE AMENDED MOTION
FOR NEW TRIAL—August 12, 1964

On this the 12th day of August, 1964, the defendant having moved the Court for leave to file an Amended Motion for New Trial, and the Court being of the opinion that such leave should be granted:

It Is Accordingly Ordered that the defendant, Associated Press, is granted leave to file an Amended Motion for New Trial in this cause within twenty days from this date.

Signed and Entered the day above written.

Chas. J. Murray, Judge Presiding.

[fol. 77]

IN THE 17TH JUDICIAL DISTRICT COURT OF
TARRANT COUNTY, TEXAS
No. 31741-C

[Title omitted]

PLAINTIFF'S MOTION TO CORRECT JUDGMENT—
Filed August 13, 1964

To said Honorable Court:

Plaintiff, Edwin A. Walker, moves the Court to correct the judgment signed herein on 3 August 1964 by sustaining in full the plaintiff's motion for judgment and overruling in full the defendant's motion for judgment notwithstanding the verdict and the answers to each issue, and thereupon to correct the judgment by making the plaintiff's recovery against the defendant the sum of \$800,000.00.

Wherefore plaintiff moves the Court to correct the judgment accordingly.

Looney, Watts, Looney, Nichols & Johnson, 219
Couch Drive, Oklahoma City, Oklahoma;

Address, Woodgate, Richards & Condos, By: Wm.
Address, Jr., 627 Fidelity Union Life Building,
Dallas 1, Texas;

Attorneys for Plaintiff.

[File endorsement omitted]

[fol. 78]

IN THE DISTRICT COURT OF TARRANT COUNTY, TEXAS

17TH JUDICIAL DISTRICT

No. 31741-C

[Title omitted]

DEFENDANT'S AMENDED MOTION FOR NEW TRIAL—
Filed August 31, 1964

To the Honorable Judge of Said Court:

Now comes defendant, The Associated Press, and with leave of the Court first had and obtained makes and files this its Amended Motion for New Trial, and would respectfully show as follows:

I.

The Court erred in overruling Grounds 1, 2, 3, 5, 6, 7, 8, 9, 11, 12, 13, 16 and 17 of Defendant's Motion to Disregard the Jury's Verdict and for Judgment Notwithstanding such Verdict, for each and all of the reasons therein set forth, which said Grounds read as follows:

(1) The jury's negative finding in response to Special Issue No. 1 should be set aside and disregarded because the evidence conclusively established as a matter of law that the statement "Walker, who Sunday led a charge of students against Federal marshals on the Ole Miss campus" was substantially true.

(2) The jury's negative finding in response to Special Issue No. 2 should be set aside and disregarded because the evidence conclusively established as a matter of law that the statement quoted in the preceding paragraph, and in said Special Issue No. 2, con-

[File endorsement omitted]

stituted a fair comment about a matter of public concern published for general information concerning the plaintiff's activities at the time and place involved.

(3) The jury's negative finding in response to Special Issue No. 3 should be set aside and disregarded because the evidence conclusively established as a matter of law that the statement inquired about therein, as quoted in paragraph 1 of this motion, was made by the defendant in good faith in reference to a matter in which the defendant had a duty to report to its members and thence to the public.

[fol. 79] (5) Since the statement "Walker, who Sunday led a charge of students against Federal marshals on the Ole Miss campus" constituted as a matter of law, under all of the evidence, fair comment about a matter of public concern published for general information, such statement was and is absolutely privileged under the provisions of Article 5432 of the Texas Statutes; or, in the alternative, said statement was qualifiedly privileged under the provisions of said Statute, and, there being no evidence of malice, judgment should be rendered for defendant and against the plaintiff.

(6) Since the statement quoted in the preceding paragraph was as a matter of law, under all of the evidence, made in good faith by the defendant in reference to a matter in which the defendant had a duty to report to its members and thence to the public, such statement was privileged, and, there being no evidence of malice, judgment should be rendered for defendant and against the plaintiff.

(7) The jury's negative finding in response to Special Issue No. 5 should be set aside and disregarded because the evidence conclusively established as a matter of law that the statement "Walker assumed command of the crowd" was substantially true.

(8) The jury's negative finding in response to Special Issue No. 6 should be set aside and disregarded because the evidence conclusively established as a matter of law that the statement quoted in the preceding paragraph, and in said Special Issue No. 6, constituted a fair comment about a matter of public concern published for general information concerning the plaintiff's activities at the time and place involved.

(9) The jury's negative finding in response to Special Issue No. 7 should be set aside and disregarded because the evidence conclusively established as a matter of law that the statement inquired about therein, as quoted in paragraph 7 of this motion, was made by the defendant in good faith in reference to a matter in which the defendant had a duty to report to its members and thence to the public.

(11) Since the statement "Walker assumed command of the crowd" constituted as a matter of law, under all of the evidence, fair comment about a matter of public concern published for general information, such statement was and is absolutely privileged under the provisions of Article 5432 of the Texas Statutes; or, in the alternative, said statement was qualifiedly privileged under the provisions of said Statute, and, there being no evidence of malice, judgment should be rendered for defendant and against the plaintiff.

(12) Since the statement quoted in the preceding paragraph was as a matter of law, under all of the evidence, made in good faith by the defendant in reference to a matter in which the defendant had a duty to report to its members and thence to the public, such [fol. 80] statement was privileged, and, there being no evidence of malice, judgment should be rendered for defendant and against the plaintiff.

(13) There is no evidence whatever of damages, and therefore the jury's answer to Special Issue No. 9 has

no support in the evidence, and said answer should be set aside and disregarded.

(16) Notwithstanding the verdict of the jury, the Court should render judgment for the defendant because any judgment awarding money damages to plaintiff against defendant would constitute a restraint and deterrent to the publication of news and a restraint, deterrent and denial of the freedom of the press as guaranteed to defendant by the First and Fourteenth Amendments to the Constitution of the United States of America.

(17) Notwithstanding the verdict of the jury, the Court should render judgment for the defendant because any judgment awarding money damages to plaintiff against defendant would constitute a restraint and deterrent to the publication of news and a restraint, deterrent and denial of the freedom of the press as guaranteed to defendant by Article 1, Paragraph 8, of the Constitution of the State of Texas.

And defendant here renews and again urges each of the foregoing Grounds.

II.

The Court erred in overruling Defendant's Second Objection to the Court's Charge and each and every ground thereof, which reads as follows:

Defendant objects and excepts to special issue No. 1 for the reason that the statement inquired about is a comment rather than a fact as a matter of law, and as submitted is a comment on the weight of the evidence and infers that said activity was libelous per se rather than submitting the same to the jury to so determine.

III.

The Court erred in overruling Defendant's Third Objection to the Court's Charge and each and every ground thereof, which reads as follows:

Defendant objects and excepts to special issue No. 4 and the definition thereof for each and all of the following reasons:

(a) There is no evidence to support the submission of such issue;

[fol. 81] (b) There is insufficient evidence to support the submission of such issue;

(c) Neither the issue nor the definition informs the jury that malice cannot be inferred from the publication itself, which is a necessary element of such definition or instruction;

(d) Such issue as submitted does not limit the jury to malice which may have existed at the time of the making of the publications sued upon.

IV.

The Court erred in overruling Defendant's Fourth Objection to the Court's Charge and each and every ground thereof, which reads as follows:

Defendant objects and excepts to special issue No. 5 for the reason that the statement inquired about is a comment rather than a fact as a matter of law, and as submitted is a comment on the weight of the evidence and infers that said activity was libelous per se rather than submitting the same to the jury to so determine.

V.

The Court erred in overruling Defendant's Fifth Objection to the Court's Charge and each and every ground thereof, which reads as follows:

Defendant objects and excepts to special issue No. 8 and the definition thereof for each and all of the following reasons:

(a) There is no evidence to support the submission of such issue;

(b) There is insufficient evidence to support the submission of such issue;

(c) Neither the issue nor the definition informs the jury that malice cannot be inferred from the publication itself, which is a necessary element of such definition or instruction;

(d) Such issue as submitted does not limit the jury to malice which may have existed at the time of the making of the publications sued upon.

VI.

The Court erred in overruling Defendant's Sixth Objection to the Court's Charge and each and every ground thereof, which reads as follows:

[fol. 82] Defendant objects and excepts to special issue No. 9 on damages for the following reasons:

(a) There is no evidence to support the submission of such an issue;

(b) There is insufficient evidence to support the submission of said issue;

(c) The issue as submitted and the instructions in connection therewith would permit the jury to award damages resulting from statements found by the jury to be fair comment and found by the jury to have been made in good faith in reference to a matter in which the defendant had a duty to report to its members and thence to the public, and said issue should be corrected so as to instruct the jury that no damages can be awarded for statements that are fair comment

or made in good faith in reference to a matter in which the defendant has a duty to report to its members and thence to the public.

VII.

The Court erred in overruling Defendant's Seventh Objection to the Court's Charge and each and every ground thereof, which reads as follows:

Defendant objects and excepts to the submission of special issue No. 10 on exemplary damages because there is no evidence or insufficient evidence to support a finding of exemplary damages.

VIII.

The Court erred in overruling Defendant's Eighth Objection to the Court's Charge and each and every ground thereof, which reads as follows:

Defendant specially objects and excepts to the submission of special issue No. 11 on exemplary damages because there is no evidence or insufficient evidence that plaintiff is entitled to exemplary damages.

IX.

The Court erred in overruling Defendant's Ninth Objection to the Court's Charge and each and every ground thereof, which reads as follows:

Defendant objects and excepts to the Court's charge as a whole because the same is tantamount to instructing the jury that the statements quoted in special issue [fol. 83] Nos. 1 and 5 are libelous or are libelous per se, and said charge does not contain any issues with the burden of proof upon the plaintiff inquiring in substance whether either or both of said statements were in fact libelous or libelous per se or would have been understood by an average reader to be libelous,

with appropriate definitions and instructions with respect to the meaning of the term libelous.

X.

The Court erred in rendering judgment for the plaintiff and against defendant for each and all of the following reasons:

(a) The jury's negative answer to Special Issue No. 1 is so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust, and there is insufficient evidence to support such answer;

(b) The jury's negative answer to Special Issue No. 2 is so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust, and there is insufficient evidence to support such answer;

(c) The jury's negative answer to Special Issue No. 3 is so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust, and there is insufficient evidence to support such answer;

(d) The jury's affirmative answer to Special Issue No. 4 on malice is so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust, and there is insufficient evidence to support such answer;

(e) The jury's negative answer to Special Issue No. 5 is so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust, and there is insufficient evidence to support such answer;

(f) The jury's negative answer to Special Issue No. 6 is so against the great weight and preponderance of [fol. 84] the evidence as to be manifestly wrong and

unjust, and there is insufficient evidence to support such answer;

(g) The jury's negative answer to Special Issue No. 7 is so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust, and there is insufficient evidence to support such answer;

(h) The jury's affirmative answer to Special Issue No. 8 on malice is so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust, and there is insufficient evidence to support such answer;

(i) The jury's answer to Special Issue No. 9 on damages is so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust, and there is insufficient evidence to support such answer;

(j) The amount of damages found by the jury in answer to Special Issue No. 9, to-wit, the sum of \$500,000.00, is so grossly excessive as to be manifestly wrong and unjust and to show that the jury disregarded the evidence, and was influenced by passion, prejudice, or other improper motive;

(k) The jury's affirmative answer to Special Issue No. 10 on exemplary damages is so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust, and there is insufficient evidence to support such answer;

(l) The jury's answer to Special Issue No. 11 on exemplary damages is so against the great weight and preponderance of the evidence as to be manifestly [fol. 85] wrong and unjust, and there is insufficient evidence to support such answer.

(m) The amount of damages found by the jury in answer to Special Issue No. 11 on exemplary damages,

to-wit, the sum of \$300,000.00, is so grossly excessive as to be manifestly wrong and unjust and to show that the jury disregarded the evidence and was influenced by passion, prejudice or other improper motives.

XI.

The Court erred in permitting the plaintiff Edwin A. Walker, over defendant's objection, to testify that he did not lead a charge of students against Federal marshals on the Ole Miss campus, because such testimony was an incompetent and inadmissible conclusion on the part of such witness and invaded the province of the jury.

XII.

The Court erred in permitting the plaintiff Edwin A. Walker, over defendant's objection, to testify that he did not assume command of the crowd, because such testimony was an incompetent and inadmissible conclusion on the part of such witness and invaded the province of the jury.

XIII.

In permitting the plaintiff Edwin A. Walker, over defendant's objection, to testify that he did not lead a charge of students against federal marshals on the Ole Miss campus, and that he did not assume command of the crowd, the Court further erred by stating in the presence and hearing of the jury that the Court would permit plaintiff to so testify after the Court had excluded such testimony by other witnesses, in that such statement by the Court amounted to a comment upon the weight of the evidence and inferred to the jury that the Court believed the plaintiff's testimony upon such subjects to be more credible than the excluded testimony of other witnesses with respect thereto, and such statement by the Court further indicated to the jury that in determining whether the statements by defendant were substantially true, or were fair comment, the standard to be applied by the jury was

the subjective intent of the plaintiff, whereas, the proper standard in determining such matters was how the plaintiff's conduct appeared to an ordinary viewer.

XIV.

The jury was guilty of misconduct during its deliberations, which was materially harmful and resulted in injury to defendant, such misconduct consisting of each of the following:

(a) During the deliberations of the jury, and prior to making any answers to the Special Issues, several jurors stated to the others that all news media in the past had been guilty of false, irresponsible and malicious reporting, and one juror stated in this connection that news services were always publishing false and malicious reports, all of which statements constituted misconduct in that:

(1) They constituted the receipt by the jury of original evidence with respect to the conduct of all news media in the past about which there was no evidence whatever at the trial, in direct violation of the Court's instructions to the jury, and with respect to which any evidence, if offered at the trial, would have been irrelevant, immaterial, inflammatory and prejudicial, and

(2) They clearly demonstrate preconceived bias and prejudice against this defendant on the part of at least some of the jurors which was concealed by said jurors during the voir dire examination in spite [fol. 87] of the fact that said jurors were asked on the voir dire examination if they had any preconceived bias or prejudice, to which they responded that they did not, and said bias and prejudice, if disclosed upon voir dire examination, would have likely resulted in said jurors being disqualified, or at least would have afforded defendant the oppor-

tunity to exercise its peremptory challenges against them;

(b) During the deliberations of the jury, and prior to making any answers to the Special Issues, one juror stated to the others that the jury should award plaintiff a million dollars because defendant had plenty of money and would never miss it, which said statement constituted the receipt by the jury of original evidence concerning the financial condition of this defendant in direct violation of the Court's instructions to the jury, in the complete absence of any admitted evidence with respect thereto, and with regard to a matter which was highly inflammatory and prejudicial, and with respect to which no evidence would have been permitted if offered at the trial;

(c) During the deliberations of the jury, and before answering any of the Special Issues, one of the jurors stated to the others that a plaintiff never receives damages in the amount he seeks, whereupon another juror stated that a football coach in Georgia had received a large damage award in a libel suit, which said statement constituted the receipt by the jury of original evidence concerning the results of litigation among other parties in direct violation of the Court's instructions to the jury, and with respect to which no evidence [fol. 88] would have been permitted at the trial, if offered, because the same is immaterial, irrelevant, prejudicial and inflammatory.

Each of the foregoing statements constituted overt acts on the part of the jurors occurring during the deliberations of the jury, and said statements, considered separately, and particularly considered together, clearly demonstrate the preconceived, unsupported and openly expressed conviction upon the part of at least some of the jurors that since all news media had in the past been guilty of false, irresponsible and malicious reporting, this defendant, as a part

of the Nation's news media, must be similarly disposed and guilty of the same conduct with respect to the matters alleged by plaintiff in this case, and that defendant was possessed of such financial means that the sum of one million dollars was an insignificant amount to it; and such statements could have had no other effect than to result in harm and injury to this defendant, both with respect to the issues concerning liability and those concerning damages. In support of this ground of the Motion, the affidavits of jurors M. L. Meriweather and W. J. M. Tarter are attached hereto and, to the extent they relate facts, are incorporated herein by reference.

XV.

The jury's finding of exemplary damage in the sum of \$300,000.00, despite the complete absence of any evidence of malice, and the jury's finding of general damages in the grossly excessive amount of \$500,000.00, in support of which there was no evidence whatever, when considered in connection with the misconduct described in the preceding paragraph, further shows the preconceived and unwarranted bias and prejudice against this defendant which led the jury to disregard all the evidence, even though the finding on exemplary damages was properly disregarded by the Court in rendering judgment.

[fol. 89] Wherefore, premises considered, this defendant prays that the judgment heretofore rendered be set aside and that judgment be here rendered for defendant that plaintiff take nothing; and, alternatively, defendant prays that the judgment be set aside and that defendant be granted a new trial herein; and that it have such other and further relief to which it may show itself entitled.

Cantey, Hanger, Gooch, Cravens & Scarborough, By
Sloan B. Blair, 1800 First National Bldg., Fort
Worth 2, Texas, Attorneys for Defendant.

[fol. 90]

AFFIDAVIT TO MOTION

The State of Texas
County of Tarrant

Before Me, Mary D. Blackburn, a Notary Public in and for Tarrant County, Texas, on this day personally appeared M. L. Meriweather, Who, being by me duly sworn, upon oath says:

On June 8, 1964, I was selected as a juror in a case entitled Edwin A. Walker vs. Associated Press, Cause No. 31741-C in the District Court of Tarrant County, Texas, 17th Judicial District, and thereafter through June 19, 1964, served as a juror in said case; that at or about 2:00 p.m., on June 18, 1964, the Court charged the jury and thereafter counsel for the parties argued the case to the jury and the jury then retired to begin its deliberations. During the deliberations of the jury and prior to making any answers to the Special Issues two jurors stated that all news media had in the past been guilty of false and malicious news reports. One juror stated that news services were always publishing false and malicious reports. One juror stated that we should award Walker a million dollars because the Associated Press had plenty of money and would never miss it. At some time before or during the deliberations a juror remarked that a Georgia football coach had gotten a big libel damage award.

M. L. Meriweather

Subscribed and Sworn to Before Me by the said M. L. Meriweather this 26 day of June, 1964, to certify which witness my hand and seal of office.

Mary D. Blackburn, Notary Public in and for Tarrant
County, Texas.

[fol. 91]

AFFIDAVIT TO MOTION

The State of Texas
County of Tarrant

Before Me, Wayman B. Flynn, a Notary Public in and for Tarrant County, Texas, on this day personally appeared W. J. M. Tarter, who, being by me duly sworn, upon oath says:

On June 8, 1964, I was selected as a juror in a case entitled Edwin A. Walker vs. Associated Press, Cause No. 31741-C in the District Court of Tarrant County, Texas, 17th Judicial District, and thereafter through June 19, 1964, served as a juror in said case; that at or about 2:00 p.m., on June 18, 1964, the Court charged the jury and thereafter counsel for the parties argued the case to the jury and the jury then retired to begin its deliberations. During the deliberations of the jury and before answering any of the Special Issues a few of the jurors orally stated that all news media had in the past been guilty of irresponsible and malicious reporting. Two of the jurors were more outspoken in expressing such opinion than others.

In my opinion this malicious reporting did not affect the verdict.

W. J. M. (Bill) Tarter

Subscribed and Sworn to Before Me by the said W. J. M. (Bill) Tarter this 24th day of June, 1964, to certify which witness my hand and seal of office.

Wayman B. Flynn, Notary Public in and for Tarrant County, Texas.

[fol. 92]

IN THE 17TH JUDICIAL DISTRICT COURT OF

TARRANT COUNTY, TEXAS

No. 31741-C

[Title omitted]

**PLAINTIFF'S AMENDED MOTION TO REFORM AND CORRECT THE
JUDGMENT—Filed September 1, 1964****To said Honorable Court:**

Plaintiff Edwin A. Walker, with leave of Court, files this amended motion to reform and correct the judgment signed herein on 3 August 1964, to make the plaintiff's recovery against the defendant the sum of \$800,000.00; in that there was some evidence more than a scintilla, and sufficient evidence, to sustain the jury's findings and answers to Special Issues Nos. 4, 8, 10, and 11, upon the following grounds:

1. Entrusting a story of the magnitude of the Ole Miss campus to an untrained and immature reporter without guidance from experienced personnel able to exercise discretion, and then relying unquestionably upon his lurid story charging a seasoned general with insurrection against his government, was such a showing of wilful disregard of his rights as to justify the jury's finding of legal malice.

2. When The Associated Press failed to exercise diligence to reconcile the internal conflicts and discrepancies in the excited and confused reports of an immature reporter, and sacrificed any attempt to correct and verify such statements in its own selfish interest in the speedy dissemination of a startling story, it displayed such a disregard for the rights of Walker that the jury was justified in finding legal malice.

3. The known failure of the Associated Press to verify the harmful implications of the story before its dissemina-

[fol. 93] tion to the world is some evidence from which the jury may draw the conclusion that the story was disseminated with a callous disregard to its impact on the reputation of a former general of the United States, which would constitute legal malice.

4. Upon knowledge of its conflict with the United Press story, the total failure of the Associated Press to reconcile the conflicts or investigate their cause, while continuing to disseminate the story, was evidence from which the jury could find the existence of legal malice.

5. By the failure of the Associated Press to produce its employee, Van Savell, as a witness to the intent with which the false story was written, there is a presumption which the jury may draw that his non-production was because his testimony would have been damaging, and this inference is some evidence of that ill will and evil motive which constitutes legal malice.

6. Since the jury could not see Van Savell and hear him cross-examined, to weigh whether his motives, as ratified by the Associated Press by its acceptance and transmission of his story, were vicious propaganda for the intentional destruction of Walker and his conservative views, and since the Associated Press could have produced its employee but did not do so, the jury was entitled to conclude that there was a deliberate scheme to blacken Walker's reputation, which would constitute legal malice.

7. If Van Savell had written the story in good faith and at his honest fair comment on the confused events at the Ole Miss campus, he would have appeared and told the jury so under oath, and his failure to do so is evidence of malice.

8. The deliberate persistence of the Associated Press in insisting upon the uncorroborated veracity of its immature [fol. 94] reporter from the time of the publication of his story until the jury retired, and its failure to retract or

correct its story with its harmful results, was properly considered by the jury as evidence of legal malice.

9. The unbroken lack of contrition by the Associated Press for the injury done Walker's reputation from the time of publication to the conclusion of the trial was some evidence which would justify the jury in finding legal malice.

For all of the foregoing reasons, plaintiff moves the Court to increase the amount of the judgment to correspond with the answers of the jury.

Looney, Watts, Looney, Nichols & Johnson, 219
Couch Drive, Oklahoma City, Oklahoma;

Andress, Woodgate, Richards & Condos, By Wm.
Andress, Jr., 627 Fidelity Union Life Building,
Dallas 1, Texas.

Attorneys for Plaintiff.

[fol. 95]

LETTER DATED SEPTEMBER 29, 1964 FROM JUDGE MURRAY
TO COUNSEL

CHAS. J. MURRAY
District Judge
17th Judicial District of Texas
Civil Courts Building
Fort Worth 2, Texas
Sept. 29, 1964.

Mr. Clyde J. Watts,
219 Couch Street,
Oklahoma City, Oklahoma.

Mr. William Andress, Jr.,
627 Fidelity Union Life Bldg.,
Dallas 1, Texas.

Mr. J. A. Gooch,
First National Bank Bldg.,
Fort Worth 2, Texas.

In re. Cause No. 31,741-C
Edwin A. Walker vs Associated Press

Gentlemen:

I am overruling defendant's motion for a new trial, and make the following Findings of Fact and Conclusions of Law on the issue of jury misconduct:

Findings of Fact:

Before the verdict of the jury was returned in open court,

(1) At least one juror made the statement that Associated Press was always hurting someone, and printing false and malicious reports, or words to this effect. This statement was not discussed or commented upon at length by the jury.

(2) At least one juror made the statement that Associated Press had plenty of money, and would never miss it. This statement was discussed by the jury until they were admonished that it was not a proper matter for their consideration. It was not then discussed again.

(3) At least one juror made the statement that the Georgia football coach had received a substantial award and damages for libel. There was no further comment or discussion about this statement.

[fol. 96] (4) The statement set forth in (1) above was made during a general discussion of the case.

(5) The statements referred to in (2), (3), above were made during deliberations of the jury on the issues of malice and exemplary damages.

(6) None of the aforesaid statements, either singly or collectively, made by one or more of the jurors induced any juror to change an answer, or vote differently than he would otherwise have done on one or more of the issues.

Conclusions of Law:

(1) The statement referred to in paragraph (1) above under Findings of Fact was not misconduct. The jury had before them numerous Associated Press and United Press reports, as well as news stories from several newspapers, and could have been discussing this evidence on the issue of malice when this statement was made.

(2) The statements referred to in paragraphs (2) and (3) under Findings of Fact constitute misconduct because there was no evidence in the record concerning A.P.'s financial condition or the jury award to the football coach, but they do not constitute material misconduct since I have determined that none of the statements induced any juror to change an answer, or vote differently than he would otherwise have done on one or more of the issues. Moreover, the Court has already set aside the jury findings as to malice and exemplary damages.

(3) There has been no showing, considering the pleadings, the testimony, the Court's charge, and argument of counsel, that probable injury resulted to the defendant because of any or all of these statements.

The Clerk is being directed to file a copy of this letter as part of the record in this case.

Very truly yours,

Chas. J. Murray

[fol. 97]

IN THE 17TH JUDICIAL DISTRICT COURT OF
TARRANT COUNTY, TEXAS

No. 31741-C

[Title omitted]

ORDER OVERRULING MOTIONS FOR NEW TRIAL AND TO REFORM
THE JUDGMENT—October 6, 1964

On 18 September 1964 came on to be heard the amended motion for new trial filed by the defendant Associated Press, and the amended motion to reform the judgment filed by the plaintiff, and it appearing to the Court that all of said original motions and amended motions were duly and timely filed and presented in accordance with the rules, and all parties having been heard in full, and having presented such testimony as they desired, and submitted briefs,

It is ordered that the defendant's amended motion for new trial be and the same is hereby overruled; and

It is further ordered that the amended motion to reform the judgment filed by the plaintiff be and the same is hereby overruled.

All parties excepted to adverse rulings and gave notice of appeal to the Court of Civil Appeals for the Second Supreme Judicial District of Texas, Sitting at Fort Worth.

Signed October 6, 1964.

Chas. J. Murray, Judge.

[fol. 98]

IN THE DISTRICT COURT OF TARRANT COUNTY, TEXAS

17TH JUDICIAL DISTRICT

No. 31741-C

[Title omitted]

DEFENDANT'S NOTICE OF APPEAL—Filed October 7, 1964

Now comes The Associated Press, defendant in the above entitled and numbered cause, now pending on the docket of this Court, and hereby gives notice that it desires to appeal from the judgment rendered herein on August 3, 1964, and from the order overruling defendant's Amended Motion for New Trial signed and rendered herein on October 6, 1964, to the Court of Civil Appeals for the Second Supreme Judicial District of Texas, Sitting at Fort Worth.

Cantey, Hanger, Gooch, Cravens & Scarborough, By
Sloan B. Blair, 1800 First National Bldg., Fort
Worth 2, Texas, Attorneys for Defendant.

[File endorsement omitted]

[fol. 106] Clerk's Certificate to Foregoing Transcript
(omitted in printing).

[fol. 1]

IN THE DISTRICT COURT OF TARRANT COUNTY, TEXAS
17TH JUDICIAL DISTRICT

No. 31-741-C

EDWIN A. WALKER

VS.

THE ASSOCIATED PRESS

Be it remembered, that upon the trial of the above numbered and entitled cause, before His Honor, Charles J. Murray, and a Jury, on the 8th day of June, A. D., 1964, the following proceedings were had and evidence adduced:

Transcript of Evidence

APPEARANCES:

Mr. Clyde J. Watts, Oklahoma City, Oklahoma; Mr. William Andress, Jr., Dallas, Texas; and Mr. Toy Crocker, Fort Worth, Texas, for the Plaintiff;

Cantey, Hanger, Gooch, Cravens & Scarborough, Fort Worth, Texas, By: Mr. J. A. Gooch, Mr. Carlisle Cravens, and Mr. Sloan Blair, for the Defendant.

[fol. 3]

PROCEEDINGS

[fol. 87] **OPENING STATEMENT BY MR. WATTS**

Mr. Watts: If Your Honor please, and ladies and gentlemen of the Jury: As His Honor told you, I am C. J. Watts, and I am one of the lawyers for General Walker and he is a long-time friend. For thirty-five years we have

been close personal friends. And, at this point if I seem to get too deep into the lawsuit it may be because I have too deep a personal association.

Now, I will read the Plaintiff's pleadings, and they just outline to the Jury and the Court the facts we intend to prove.

(Plaintiff's pleadings read by Mr. Watts.)

(Defendant's pleadings read by Mr. Gooch.)

[fol. 88] Mr. Watts: Thank you very much.

Mr. Gooch: May I have the Court file to read from?

I will read the Answer of the Defendant, Associated Press.

(Answer read to the Jury.)

The Court: Mr. Watts is going to make an opening statement.

Mr. Watts: If Your Honor please, and ladies and gentlemen of the Jury, the Jury, having suffered through these long delineations of the legal issues as outlined by the lawyers in this case, we feel are entitled to a very brief and simple statement of what's involved.

We expect to prove a state of facts substantially as follows:

In order to brief you properly, I will draw a very crude diagram on the board of the University of Mississippi campus:

(Drawing.)

I am never able to tell where I am going or where I have been unless I can see it.

Now, to orient the Jury and Your Honor, the top of the little rough plat, of course, is north. This is the area of the Mississippi campus where the entire riot took place, [fol. 89], as we will outline. This area in here is the so-called "Oval".

The evidence will be from General Walker and many, many witnesses that General Walker came to Mississippi for a basic reason:

Number one, as the former commander at Little Rock, to protect against making a Military operation of a very critical civilian problem.

Number two, to protest, as best he could, against the diversion of the attention of the American people and of the Military power of the country away from Cuba where he thought it belonged sincerely and into the Mississippi campus.

Now, his evidence will be that he arrived on the campus at night about 8:45; that he walked with an associate, a friend of his, along this sidewalk on the south side of University Boulevard; that when he arrived about in this position, there was a group of people gathered around this installation here, which is a Confederate Statue.

He, in this area, talked to several people for a few minutes, maybe fifteen or twenty minutes. At that time there was activity going on up in this direction. This installation here is the so-called Lyceum Building which was surrounded by a ring of U.S. Marshals.

[fol. 90] Prior to that, to his arrival on the campus, and about 8:00 o'clock the Marshals had, between them and the assembled students, a ring of Highway Patrolmen. About eight, tear gas was fired and the Highway Patrolmen pulled away and so that when Walker and a young lad, Louis Leman, who will be here in Court, arrived on the campus, there was sporadic activity out in this area out here in terms of two, three, five, a few, students, throwing rocks and sticks and things such as kids will throw, and the Marshals shooting tear gas.

Walker and Leman stood in this area for a few minutes, observed what was going on, then walked out into this area in the so-called Circle or Grove. They stayed there for

fifteen or twenty or perhaps thirty minutes, so that in a period of thirty to forty-five minutes they had proceeded from the entrance to the campus out about to in here, near, between the Confederate Monument and the flagpole, had talked with several people, observed what was going on and then started back to this area here.

About the time Walker started back, there was a convoy of vehicles going out here, leaving the campus. It became immediately obvious they were highway patrolmen leading [fol. 91] them. The evidence will be that students then raised the comment that, "The Governor has sold out."

The evidence will further be that General Walker, who had been downtown at the Court House and heard the Governor's representative speak and state his position, decided for the first time that he would get on the Confederate Statue and speak to the students.

He did get on the Statue and did make a presentation to the students, first, that violence was not the answer to nobody, that the real enemy was yonder way in Cuba. [fol. 92] At that point, the evidence will be that he was met by one massive jeer.

Later he went on to point out that the Governor had not sold them out; that the individual who had let the student onto the campus was the highway patrolman, one Col. Birdsong, and not the Governor.

After the speech, Walker got down from the monument, stood around here for a few more minutes and again, in company with several other people, one of whom is a deputy sheriff, who will be here to testify and was with Walker constantly from the time Walker arrived on the campus and he saw him coming until the time he left, this deputy sheriff will testify that at no time then did Walker lead or participate in anything that even remotely approximated a charge.

The evidence will be that after the speech on the monument, Walker then again proceeded out into the oval area

where there was activity of a constant sporadic nature of groups of students throwing things, tear gas being fired, falling back, more groups coming in, Walker stood around in this area and observed those activities for several hours.

Now his evidence will be, and it will be supported by many, many witnesses, that at no time did he lead a charge; at no time did he commit the act that the Associated Press [fol. 93] circulated of him around the world, that he arrived striding down the middle of University Avenue, met the leaders of the mob in this vicinity, assumed command of the crowd, had a student or a leader of the mob on each side by each elbow, lined up in front of a thousand people, led a charge against the Marshals and raced back to the statue.

Our evidence will be, Ladies and Gentlemen, that that just did not occur and is an absolute deliberate fabrication by a 21-year-old boy who was a cub reporter and represented the Associated Press at that incident.

The evidence will further be that this lad, after he claims he saw this alleged charge, is supposed to have raced 600 yards over here and made a report and then raced back at which time he saw Walker speaking upon the monument. [fol. 94] Now, when we have presented to you ladies and gentlemen these facts, we feel that beyond any possible shadow of a doubt this Jury must conclude that Walker did not lead a charge. That proves the first issue in the lawsuit. The second issue is, assuming as we hope we do that we are able to prove that this is a deliberate fabrication, and that this is false, that Walker did lead a charge, that the Associated Press, by its conduct in its news releases, literally did it with malice, in which event if we are able to prove that, not only will Walker be entitled to actual damages but punitive damages.

Our evidence will be substantially as follows: The Associated Press will bring into Court a stack of news issues in which in issue after issue after issue and message after

message it is reported Walker, leading a charge; that he was arrested by the Federal authorities; that he was shipped to the insane hospital in Springfield, Missouri. The evidence will be a stack of news releases by the Associated Press this high (indicating) as to Walker being arrested, committed to the nut house. The evidence will be that when they came around to report in a sanity hearing that we held in Oxford on November 21, 1962, that they reported extensively and in several news releases on the [fol. 95] so-called A and B wire the testimony of the Government psychiatrist, who incidentally had never seen him, that he was a paranoid and psychosomatic. The evidence will be that along toward the end of the hearing the Judge of that Court opened a report by Dr. Stubblefield of Dallas, a Court-appointed psychiatrist, who stated in his report that Walker was of superior intelligence; that report, however, that Walker was of superior intelligence, never found its way into the A and B wire, and the evidence as to Walker's sanity got cut off right there.

Oh, it got in a few local papers, maybe in Fort Worth, probably in Fort Worth, but anyhow the evidence will be that the Associated Press deliberately smothered the evidence, as opposed to the testimony that Walker was crazy.

Finally, the final culmination and conclusion of this tragic incident occurred on the 22nd of January, 1962, when the United States Government, after having arrested him, after having committed him to the nut house, after his having finally got out, dismissed the charges against him, upon the grounds, it will be obvious from reading the news reports, the evidence will be, that the Associated Press, after building the thing up that he had been put in jail, [fol. 96] after building up that he was paranoid and psychosomatic had a little tiny release, a line or two, that Walker had been released by the Government and the Government dismissed the charge, which means it can be re-filed in five years.

So, when we get through with this evidence, ladies and gentlemen of the Jury, I feel sincerely that you ladies and gentlemen will find that this young lad, Van Savell, a twenty-one year old Cub Reporter, sat down and wrote himself a story that absolutely did not happen, and that General Walker, after having suffered six days and nights among the atmosphere of the insane, certainly did not get a fair break in the most powerful news media on the face of the earth, under the label of the truth.

Thank you.

OPENING STATEMENT BY MR. GOOCH

Mr. Gooch: You will recall that at the outset the Court said that the pleadings and what the lawyers say is not evidence. I assume he is still of that opinion as he listens to Mr. Watts make this very dramatic appeal, and if he is in a position to back up his statement on that, there is not much for the Jury to listen to.

You told me on voir dire examination that you would listen to the witnesses in this case; that you would keep [fol.97] an open mind until all of the evidence in this case is concluded.

The preparation for this case has not been in ten or fifteen minutes or ten or fifteen days. There have been some fifty-one depositions taken in this case. All of those people who could have had or possibly had, if they could be found, a possible knowledge of what occurred on the campus of the University of Mississippi on the night of September 30, 1962; part of the pleadings that were read to you in this case was to the effect that prior to the time General Walker made his advent on the campus of the University of Mississippi he called in—mind you, the Press didn't seek General Walker out, General Walker called for a Press conference at his Turtle Creek home in the City of Dallas, and he said to the reporters and to the world on television tape, "I am going to Mississippi," in effect

Barnett is right. "The orders of the United States Government should be disobeyed," by inference, and, "how should we do it?" "Bring your flags, your tents and your skillets, ten thousand strong from every state in the Union."

He gets over to Mississippi, this man who had called the Press conference, all the reporters in the news media, the TV camera to take down for posterity what he has to say. [fol. 98] He gets over to Mississippi and he says, "I stand shoulder to shoulder with Governor Ross Barnett. Rally to the cause of freedom. Now or never. Bring your flags, your tents and your skillets," by inference, "We will show the United States of America and the constituted authorities what should be done in this instance."

One more time he calls in the Press, after he had arrived at Oxford, Mississippi, if you please, on the scene of where he was to come. He says, "We are called to Oxford. We are here to carry out what Governor Ross Barnett said he wanted to carry out. We will not let the constitutional authority of this United States interfere with what we want to do as citizens. Mind you, he was not a citizen of the State of Mississippi, he lived in the State of Texas."

Mr. Watts dramatically portrayed General Walker slowly walking on the campus at the University of Mississippi along about 5:00 p. m. on the evening of September 30, 1962.

Well, I have read these depositions. I participated in these depositions. Maybe Mr. Watts and I don't read the same language, I don't know, but Walker says—that is, General Walker I am talking about, a great man when he [fol. 99] was in the Army until he started mixing with things he had no business meddling in. He says, "I came down University Avenue." That he got near the campus; he turned around and waved his arm, "Come on." He got within a few steps of the Confederate Statue. He saw a group of people standing on the corner. This is General Walker testifying. He says, "Come on."

Then we pick up and we have got Mr. Watts saying, "We have got witnesses." We sure have. Mr. Watts'

witnesses, if they tell the truth as they did when their depositions were taken, will testify that General Walker came on this campus and got with this howling mob.

[fol. 100] The deputy sheriff having been sent there by Governor Ross Barnett to keep Meredith from entering the University of Mississippi.

We are not trying a segregation or integration case, Ladies and Gentlemen. We are trying the rights of an individual public figure to defy in any manner the law of this land; otherwise we would have anarchy, we would be guided by mob rule.

The witnesses who have testified that have been called by Mr. Watts, have testified that General Walker went with a group over near the flagpole which is about the center of this circle (indicating on blackboard). He called it an oval. The witnesses usually refer to it as a circle. There, while he was loitering there with this crowd, that Walker had nothing in his hand. Nobody ever said Walker had a missile or anything in his hand. But there this group surrounding Walker hurled their rocks and missiles at the United States Marshals who had been ordered in there by the President of the United States to see to it that the law of the Court in this country should be obeyed. That is what we are trying in this case, as to whether or not a man can defy the Court.

Mr. Address: I believe that is completely beyond the scope of the pleadings. We are trying whether or not the [fol. 101] Associated Press can make a false statement about what a man did, not whether the man can defy the Courts.

The Court: Ladies and Gentlemen, you have heard the pleadings. Questions will be submitted to you concerning matters of alleged libel. Now in answering those questions you can consider any evidence which is offered in evidence in this trial, and according to the pleadings evidence of the activities of the Plaintiff here and the activities of possibly Meredith, and certainly the Marshals, and what

the Courts did, will be in evidence. You may consider all of that.

You may proceed.

Mr. Gooch: I reiterate we are not trying the question of integration or segregation; we are trying a story that was written by the Associated Press of the action of General Walker on the campus of the University of Mississippi from about 8:45 p.m., on the night of September 30, 1962, until the wee hours of the morning.

The Associated Press, as Mr. Watts has told you, as Mr. Andress has told you, is an organization that gathers news. The Associated Press does its best to cover every piece of news that it can get its hands on. It does not publish a newspaper of its own. It sends these stories to the newspapers who are members of the Associated Press, [fol. 102] for the newspapers to use or not as they see fit, such news as is sent to them on the wires.

The issue in this case—another issue in this case will be the truth or falsity and the fair comment that was given by the Associated Press to such newspapers as cared to print the story.

Now I will not go into the details of what the witnesses will testify. I said to you before that you will listen to these witnesses and you can draw your own conclusion as to whether or not this publication charged to be libelous by General Walker was, in fact, libelous, false or untrue. I think you will determine from the witnesses and from General Walker himself that the statements made about General Walker were in fact true.

Now I know this may be boring to you but we are full of our cases and I can't sit here and listen to Mr. Watts get up and tell you what the facts are, without giving you my version of them, because I have been there, too. As Charlie McCarthy used to say, I was there, Charlie. Not in Mississippi, but in these depositions.

He says the Associated Press slanted the news. He says

the Associated Press did not send out a story from Dr. [fol. 103] Stubblefield to the effect that Walker, at the time of his mental examination along about October 2nd or 3rd of 1962, was acting under a superior intelligence—

Mr. Watts: —excuse me.

Mr. Gooch: —I challenge that statement—

Mr. Watts: —excuse me—

Mr. Gooch: The very statement—

The Court: Just a minute.

Mr. Watts: If Your Honor please, I must challenge this statement. I didn't say they didn't send it out. What I said, the statement of Walker's imprisonment and insanity was put on the A and B wire; the statement by Dr. Stubblefield was put on the subordinate wire.

Mr. Gooch: So we are tit-for-tat.

[fol. 104] As I understand the pleadings in the case, and the Court will correct me if I am wrong, Mr. Watts has traversed the state, the State of Texas. The story Mr. Watts claims is untrue and false was published in the Fort Worth Star Telegram and was an AP story. Now, he says he went all the way around the world getting his pleadings. He is limited, or should be limited in his cause of action, to something that happened in the State of Texas and particularly in the Fort Worth Star Telegram. Now, I say to you, Mr. Watts, and I say to you ladies and gentlemen without fear of successful contradiction, that this Associated Press story was sent to the Star Telegram, the same newspaper that published the libelous article, that Mr. Watts says is libelous, in which they said that the psychiatrist who examined General Walker, the psychiatrist said General Walker was operating under a superior level of intelligence at the time he was examined.

He further read to you and stated in his argument that they slanted the news because the Associated Press did not send to the Star Telegram as part of its news coverage the contention that General Walker had been denied his

constitutional rights when he was arrested in Mississippi. [fol. 105] I challenge that statement and I tell you that we will show and Mr. Watts knows we will show, and yet he stood here and read to you that the news was slanted. [fol. 106] He knows that the Associated Press in a story from Oxford, Mississippi, on the very day that this motion he's complained of, complaining that we didn't print it, on the very day it was printed the Associated Press, on its wires, sent a verbatim copy of Mr. Watts' motion in favor of General Walker to the Forth Worth Star Telegram and it was run on the very day that it was filed in Oxford, Mississippi.

News slant? Ladies and Gentlemen, the Associated Press is not mad at anybody. They have one function in life to perform and that is to disseminate to the public news as it occurs and as quickly as possible. It is given to the newspapers to print as they see fit. The headlines are not those of Associated Press. The news stories come in the newspaper. The newspaper can do as it sees fit.

I have taken too much of your time. You get carried away with these things when it is attempted, as I see it, to deliberately mislead the jury before the evidence starts.

I apologize for my outburst.

Again, may I say, with all candor, listen with me on the evidence in this case and see if the innuendoes and statements that I have made to you are not sustained by the evidence that comes from that witness stand.

[fol. 107] The Court: Ladies and Gentlemen, it's too late; I think, this afternoon to go ahead and start with the testimony. We will just get a little bit in, so I am going to recess until 9:00 o'clock tomorrow morning.

Now this jury room to your left will be your home while you are trying this case. Just be in the jury room tomorrow morning at 9:00 and we will call you out from there.

(Thereupon, at 4:45 p.m., an adjournment was taken until 9:00 o'clock, Tuesday, June 9, 1964.)

[fol. 110]

Proceedings

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Gooch: If Your Honor please, we ask the invocation of the Rule with respect to the witnesses.

The Court: The Rule has been invoked in this case and that means all the witnesses except the parties to the suit must remain outside until each is called by the respective attorneys. So, Mr. Andress and Mr. Watts, you keep an eye on your witnesses and if they walk in ask them to remain outside.

Mr. Watts: Do you wish to swear all witnesses who are available?

The Court: No, I will swear them one at a time.

Mr. Watts: If Your Honor please, we have some news releases I think we can open up with.

The Court: All right.

Mr. Watts: If Your Honor please, we have here by agreement the respective teletype releases of the Associated Press which we now will offer in evidence.

The Court: You want to have them marked?

Mr. Watts: Yes, sir. It will probably save time if we just mark each of these groups as an exhibit, and then we will designate them as A, B, C and so forth later. Mark [fol. 111] this as Exhibit 1.

(Document marked Plaintiff's Exhibit 1, by the Court Reporter.)

Mr. Cravens: If you will, read which is which.

Mr. Watts: Yes, we will.

Mr. Gooch: I assume—

The Court: Just a minute, he is marking.

Mr. Watts: This is 2, 3, 4, 5, 6, 7, 8, 9, and 10.

(Documents marked Plaintiff's Exhibits 2, 3, 4, 5, 6, 7, 8, 9 and 10 by the Court Reporter.)

Mr. Watts: Now, Mr. Gooch, do you have a comment to make?

Mr. Gooch: I don't know what you are introducing, or having marked, so I assume the objection, if any, will be raised at the time of the entry of the individual item.

Mr. Watts: Yes, sir.

Mr. Gooch: As I understand the ruling of the Court on pre-trial conference, that the matters introduced are confined to the AP reports as carried in the Forth Worth Star Telegram?

The Court: I don't recall that. As far as the allegations in paragraph 2 of the Petition are concerned.

[fol. 112] Mr. Gooch: That's right.

The Court: In those wire reports that appeared in the Star Telegram, are the only ones to be admitted.

Mr. Watts: That is correct. It is my understanding—

The Court: Is that what you have at this time?

Mr. Watts: No, sir, it was my understanding that the news releases alleged in paragraph 2 of the Petition would be offered without identification to establish the libel, and that everything connected with Walker issued by the AP would be tendered by the Plaintiff in support of its contention of malice. That is my understanding of the pre-trial.

The Court: Are you offering one of those news reports?

Mr. Watts: At this time we offer to the Jury the news report upon which paragraph 2 asserts libel.

The Court: That is all you are offering now?

Mr. Watts: That is all we are offering now. Then, when they are specifically identified we will introduce the entire news releases of the Associated Press, to establish malice.

The Court: To which exhibit are you now referring?

Mr. Watts: I must pick them out. Let's see. Now, we [fol. 113] will hold these (indicating) on the side. They are not identified as exhibits.

If Your Honor please, it would save considerable time if we later—if I offer them as alleged in the complaint, the specific news releases, and then we will get the same releases out of the file.

The Court: I will admit that at this time.

Mr. Watts: If Your Honor will permit me to read it from the original Complaint then.

The Court: All right.

Mr. Watts: Now, Ladies and Gentlemen of the Jury, it has been agreed by counsel in this case that the specific teletype report as alleged in the Plaintiff's Original—rather, Amended Complaint, to be presented to the Jury as having been issued by the Defendant, Associated Press.

I will now read to the Jury the teletype report issued by the Associated Press that the Plaintiff, General Walker, asserts is false and libel. This will be identified in the record as the Plaintiff's Exhibit 1-A.

(Plaintiff's Exhibit 1-A marked by the Court Reporter.)

Mr. Watts: And the release under date of October 3rd will be identified as the Plaintiff's Exhibit 1-B.

[fol. 114] (Plaintiff's Exhibit 1-B marked by the Court Reporter.)

Mr. Watts: I will now read to the Jury the Plaintiff's Exhibit 1-A, under date of October 2, 1962:

PLAINTIFF'S EXHIBIT 1-A

"Walker, who led a charge of students against Federal Marshals on the Ole Miss campus was arrested on four counts, including insurrection against the United States."

That is the Plaintiff's Exhibit 1.

Mr. Gooch: 1-A.

Mr. Watts: I will now read—sir?

Mr. Gooch: 1-A.

Mr. Watts: 1-A, yes.

Mr. Gooch: All right.

Mr. Watts: I will now read Plaintiff's Exhibit 1-B, which is under date of October 3, 1962, was issued by the Associated Press upon its teletype wire services to the Fort Worth Star Telegram in Fort Worth, and as I understand,

it is admitted by all parties that this news release was published by the Fort Worth Star Telegram?

Mr. Gooch: That is correct.

Mr. Watts: All right.

[fol. 115]

PLAINTIFF'S EXHIBIT 1-B

Editor's Note: "Former Major General Edwin A. Walker, a key figure in the week-end battling—

Mr. Gooch: Just a minute. The Editor Note was by the Star Telegram?

Mr. Watts: No, that's part of the news release, Mr. Gooch. See, that is the AP Editor's note and is a part of the news release.

(Reading) "Former Major General Edwin A. Walker, a key figure in the week-end battling over admission of a Negro to the University of Mississippi, was eating dinner Sunday night when he says that he was told there was a scene of considerable disturbance on the University of Mississippi campus. He went there.

Here is the story of Van Savell, twenty-one, Associated Press newsman, who was on the scene and saw what happened:

By Van Savell. Oxford, Mississippi. October 3, 1962, AP. Utilizing my youth to the fullest extent, I dressed as any college student would and easily milled among the several thousand rioters on the University of Mississippi campus at night. This allowed me to follow the crowd, a few students and many outsiders, as they charged Federal [fol. 116] Marshals, surrounding the century-old Lyceum Building.

It also brought me into direct contact with former Major General Edwin A. Walker, who is now under arrest on charges of inciting, insurrection and seditious conspiracy.

Walker first appeared in the riot area at 8:45 p. m., Sunday, near the University Avenue entrance about 300 yards from the Ole Miss administration building. He was nattily

dressed in a black suit, tie and shoes and wore a light tan hat.

The crowd welcomed Walker, although this was the man who commanded the 101st Airborne Division during the 1957 school integration riots at Little Rock, Arkansas.

One unidentified man queried Walker as he approached the group, "General, will you lead us to the steps?" I observed Walker as he loosened his tie and shirt and nodded yes without speaking.

He then conferred with a group of about fifteen persons who appeared to be the riot leaders. The crowd took full advantage of nearby construction work. They broke new bricks into several pieces, took survey sticks and broken soft drink bottles. Walker assumed command of the crowd, which I estimated at 1,000, but was delayed for several minutes when a neatly dressed, portly man of about forty-[fol. 117] five approached the group. He conferred with Walker for several minutes; then joined a group near the front.

Two men took Walker by the arms and they headed for the Lyceum and Federal Marshals.

Throughout this time I was less than six feet from Walker. This march toward tear gas and some 200 Marshals was more effective than the previous attempts. Although Walker was unarmed, the crowd said this was the moral support they needed.

We were met with a heavy barrage of tear gas about 75 yards from the Lyceum steps and went a few feet further when we had to turn back. Before doing so, many of the rioters hurled their weapons, the bricks, the bottles, rocks and wooden sticks toward the clustered Marshals. We fled the tear gas and the charging Marshals, the crowd racing back to a Confederate soldiers statue near the Grove entrance below the Lyceum.

I went to a telephone. A few minutes later I returned and found Walker talking with several students. Shortly

thereafter, Walker climbed half way up the Confederate Monument and addressed the crowd.

I heard Walker say that Governor Barnett had betrayed the people of Mississippi, "But don't let up now," he said, [fol. 118] "You may lose this battle but you will have been heard."

He continued, "This is a dangerous situation. You must be prepared for possible death. If you are not, go home now."

There were cheers. It was apparent that Walker had complete command over the group.

By this time it was nearly 11:00 p. m. and I raced to the telephone again.

Upon my return, Walker was calmly explaining The New Frontier Government to several by-standers. He remained away from the rioting throughout the next few hours but advised on several tactics.

One Ole Miss student queried the former General, "What can we use to make the tear gas bombs ineffective? Do you know of any way that we can attack and do some damage to those damn Marshals?"

Walker suggested the use of sand to snuff out the tear gas. This stuff worked real well, "But where can you get it?" He asked.

At this time the rioters were using a University fire truck and fire extinguishers in an attempt to make the tear gas bombs ineffective.

I left Walker and walked a hundred yards away where Molotov Cocktails and gasoline bottles with a fuse were [fol. 119] made.

Again I left the area for a telephone. As I walked toward a dormitory with George Bartsch of the Little Rock Associated Press Bureau, we were attacked by Marshals who mistook us for students. We were deluged by tear gas, manhandled, handcuffed and beaten with clubs during a 200-yard walk to the Lyceum Building.

Thanks to recognition by Chief Marshal James B. McShane, we were quickly released and given freedom in the

Marshal's headquarters. Within minutes shotgun and rifle fire erupted from the rioting crowd and two men, one a French newsman, were killed. We considered ourselves lucky to have been arrested and glad to be behind closed, heavily guarded doors.

Is Richard Sweatt out there?

The Court: Mr. Watts, has there been a stipulation that Exhibits 1-A and 1-B were written by an employee of the Associated Press who was in the course of his employment with the Associated Press at the time?

Mr. Watts: There has been such a stipulation and perhaps it would be in order to confirm it at this time.

[fol. 120] Mr. Gooch: That is correct.

Mr. Watts: At this time, then, I will read a deposition from another of the Associated Press employees.

Mr. Gooch: You called Sweatt. What are you doing now?

Mr. Watts: I thought while he was showing up, I would read that deposition.

Mr. Cravens: Which deposition are you reading, Mr. Watts?

Mr. Watts: Just a moment, I will get it here. Ben Thomas.

If the Court please, this is the deposition of B. R. Thomas, Associated Press newsman, taken in New Orleans on March the 31st, 1964.

[fol. 121] "DEPOSITION OF B. R. THOMAS"

Mr. Watts: (Reading)

"Q. Your name, please, sir?

A. Ben Thomas.

Q. Your profession?

A. I am an Associated Press newsman.

Q. And what educational background do you have, Mr. Thomas?

A. I have three years of college, and almost thirteen years in the news profession.

Q. Have you done news work, in addition to working in the office for A.P.?

A. Yes, I have.

Q. What is the difference between a reporter and an office re-write man? Are you interchangeable?

A. I am interchangeable, that is why I say I am an A.P. Newsman. We do office work, re-writes, and also field reporting.

Q. Where did you go to school?

A. Henderson State Teachers College, Arkansas.

Q. When did you graduate?

A. I did not graduate. I lacked about twelve hours receiving a Bachelor's degree.

Q. Where were you raised, Mr. Thomas?

A. In Florida, and in Arkansas.

[fol. 122] Q. What place in Florida?

A. Sarasota, where I was born.

Q. How long did you live in that place in Arkansas? What was that place in Arkansas?

A. Hot Springs was my grandmother's house, and then I lived in Hot Springs for a short period, up until the time I was fifteen, and then I was there from then on out, until—except for the times I visited Florida.

Q. Where did you work when you got out of school?

A. I worked— After college?

Q. Yes?

A. Well, I was in college, and before I was in college while I was finishing high school, I worked on the Centennial Record in Hot Springs, Arkansas.

Q. And then where?

A. Then the Times Picayune, in New Orleans.

Q. How long were you with them?

A. I was with the Picayune for seven months.

Q. Where then?

A. Associated Press Bureau in New Orleans.

Q. What was the occasion for your transfer?

A. There was a vacancy in the A.P., and I had long

wanted to work for the Associated Press, so I applied for it and was hired.

Q. When did you first go to work for them?

[fol. 123] A. The first of July, 1960.

Q. What is your age?

A. Thirty. (30)

Q. Do you know what personnel the Associated Press sent to cover the Oxford incident?

A. When you say, "Oxford incident," do you mean on September 30, or the entire story?

Q. Just September 30?

A. I believe I recall the principal people as they were. There were so many press people thrown in that night I might miss one.

Q. Give us the best you can recollect, the ones that came from the New Orleans office?

A. To the best of my knowledge, there was no one from the New Orleans office itself at Oxford that night except photographer James Bourdier. There were people from some of our correspondent points.

Q. What office was Van Savell from?

A. Jackson, Mississippi office.

Q. And no newsmen at all were sent from New Orleans?

A. To the best of my knowledge, there were none out of New Orleans, except our photographer newsman, James Bourdier.

Q. What time that day, on the 30th, did you come to work?
[fol. 124] A. Around three o'clock in the afternoon.

Q. What was your assignment?

A. I came to the Bureau to write some sport stories early, and be on hand for anything that happened at Oxford.

Q. What was your assignment in the office?

A. My specific assignment that night was to work the night re-write shifts from ten o'clock at night until six-thirty in the morning.

Q. Now, from eight o'clock—

A. That is my normal shift on Sundays, and I am sure the records will show that I was scheduled to work that

shift that night. I usually came in about three in the afternoon to do my sports, take a little break, and then come back on at ten o'clock.

Q. What do you mean by the "re-write shift"?

A. It is just an A.P. term. That is what the shift is called. Actually, the early editor, or the overnight editor is responsible for filing the early reports for the afternoon newspapers.

Q. Why do you use the term 're-write'?

A. Because much of your duties consist of re-writing stories from the previous cycle.

Q. What are your guidelines for re-writing?

A. I am not so sure what you mean by that.

Q. Why don't you just disseminate on the wire services [fol. 125] the report that the news writers send in, that is the news men send in?

A. This is not necessarily re-writing of reports that newsmen send in. On this night re-write or early shift, you take stories that have occurred during the period which would be reported in the morning newspapers, and you re-write the stories simply by changing the structure of the words and possibly digging up fresh information. If there is not a reporter, getting on the phone yourself, and calling to the sheriff or wherever it might be, and pick up fresh information to have a different story for the afternoon newspapers than the morning ones had.

Q. Did you re-arrange then, the context of—

A. No, not the context. The contents are re-arranged but not the context. We never try to change the meaning of any story unless there is fresh new information that does change the situation of the story.

Q. Were you on the telephone on the night of September 30?

A. Yes, I was.

Q. With whom were you communicating in Oxford?

A. I communicated with Van Savell, I talked to Edmund Lebercon, and I talked to Gavin Scott.

Q. All right. Go on.

A. And I talked to two Ole Miss. students who were working with the A.P.

Q. Were they so-called 'stringers'?

A. Yes, sir.

Q. Would you know who they are?

A. Yes, John Perkins and John Hall. I also talked one time to Wilson Minor, who is the Times Picayune Jackson, Mississippi correspondent.

Q. Go ahead.

A. I talked to A. P. photographer, James Bourdier.

Q. How do you spell that?

A. B-o-u-r-d-i-e-r.

Q. All right. Go on.

A. And I talked to Jim Laxson, who is photo editor in the Atlanta Bureau. I may have talked to one or two or possibly three more people, but I can't recall. If I did, they were very brief conversations.

Q. Did any of these individuals, other than Savell, report to you that they had seen General Walker lead a charge against the United States Marshals?

A. No, sir, except for the students. May I clarify that answer? May I add something?

Q. Yes.

A. Except for the students who were in the dormitory room, where we had a telephone line, and they did not go out of the room, and could not see the area where the demonstrations, the main demonstrations, took place. The other A.P. people that I talked to, that night I talked with them much later, and none of them were in the vicinity of the Lyceum Building.

During the early part of the evening, from the start of the demonstration on to around seven o'clock, until after midnight.

Q. Now, you used the term, 'except for the students', did the students purport to see the charge?

A. No. I say none other than I talked to the students. The only ones that I talked to between approximately seven o'clock and midnight were the two students who were in

their room, and were in their dormitory. We had maintained a telephone line, a long distance line, into their room that night for about nine to ten hours, and they did not leave their room, they stayed there and held their lines. Savell would come in from his various points where he had been on the campus.

Q. What was the nature of these reports that these students gave you?

A. The only reports that they gave me was that tear gas was seeping into their dormitory, and they told me of hearing what sounded like either rifle fire or possibly tear gas cannisters exploding, of seeing other students from their window, which looked in the opposite direction of the Ly-[fol. 128] ceum, of seeing students and others scurrying about.

Q. Now then, let's get down to Van Savell. Start with the earliest report that you received from him, and outline it by time and content.

A. It has been nearly a year and a half. The earliest report that I received from Savell that night was around five o'clock in the evening, on the Marshals being thrown into the airport at Oxford, and going onto the campus.

Q. Did you have at that time, two phones connected to Oxford?

A. I couldn't say. At various times, one. We had from six-thirty at night until around four o'clock a.m. in the morning, this one telephone line into the dormitory room occupied by John Hall and John Perkins. The connection was continuous on that one, and at various times when the other newsmen who were in the area could get an open line, they would talk to the Bureau, but for the period from seven o'clock until almost three o'clock, the only method of communication we had was this one telephone line, and over our wire photo net work net up in a motel some ten blocks from it.

Q. Did you then, alone, maintain and operate that one open telephone line at Perkins' room?

A. Yes, I did.

Q. Did you have any assistance on the line, or any one [fol. 129] else that helped you?

A. Around two or three o'clock in the morning, I turned the phone, very briefly, to Carl Corben who is now the editor of the States Item, a former A.P. man, and I asked him to hold it while I went to the rest room. He said there was nothing. No one had anything to report on the telephone during that time.

Q. So then the A.P. Office in New Orleans received all the reports from Savell?

A. Yes, sir.

Q. Up until two o'clock?

A. Well, it was certainly up until around three o'clock, around three or four o'clock.

Q. Well, it was certainly after midnight?

A. Yes, sir.

Q. When was the next time that you heard from him?

A. I believe the next time that I heard from him was around six-fifteen to six-twenty, when he called from this room. That is when we kept the line open from there after.

(Conference was held off the record.)

I wasn't taking notes on the typewriter of what Savell had to say. I wasn't noting the time, except where it was really pertinent, as Meredith arrived on campus at such and such a time. I don't remember whether the story said that [fol. 130] Meredith arrived on campus at such and such a time, but it seems to me that it was around six-fifteen or six-twenty that he called and said that Meredith was there or that the Marshals had circled the Lyceum Building.

Q. Have you read Savell's deposition?

A. No.

Q. You haven't seen it at all?

A. No, sir.

Q. All right. Go ahead and give us the next report. You may refer to those exhibits in that deposition to refresh your recollection if you would like. Also there are other wire releases there before you, covering the same period of time. Now, then give us the next report that you received.

A. Well, we had a television set near the telephone, and I heard President Kennedy's speech which started at seven o'clock, and before it was over, or during the middle of it, Savell came back to the phone and said that the Marshals were firing tear gas at co-eds, and that the students had started throwing bricks and bottles, stones, and rocks at the Marshals.

Q. Now, let's recheck the timing on that. Wasn't the speech at eight o'clock instead of seven?

A. To the best of my knowledge, it was seven o'clock, Central Standard Time. It might have been eight o'clock [fol. 131] Eastern Standard Time. Because the A.P. usually operates and changes time to make everything eight o'clock Eastern Standard Time, or to make it into Eastern Standard Time, the stories may show this, particularly on radio wire copies.

Q. I wish you would recheck some of your communications there, because I was positive in my own mind that it was eight o'clock.

Mr. Gooch: I think it was. It was eight o'clock, Central Standard time, it is a fact.

The Witness: All right, then that was it.

By Mr. Watts:

Q. All right. Then you do remember, distinctly remember the incident of the President's speech on the television, right before, by your side?

A. Yes, sir. Not from the television on my side, but by hearing, because they had the telephone, I mean the television, in the room, in the dormitory room at Oxford, and the boys would hold the telephone there, and I was listening to what the President had to say.

Q. All right. Go ahead then. Before this speech was over, Savell reported that bricks were being thrown and tear gas fired?

A. Yes, sir.

Q. All right. Give us the next report.

A. I can't at this time, specifically say what his next report was. I know that I told him to be sure and check back [fol. 132] in or at least get word to me every fifteen or twenty minutes, even if he really had nothing to report. Just so we would know where he was and what the situation was, and if we had any word to pass on to him.

Q. All right. Go ahead?

A. He came in, as I said, every ten or fifteen minute intervals thereafter, reporting various facts that he had seen and observed. More students, or more people, not necessarily students, throwing bricks and bottles, and the Marshals firing tear gas, and the wind was blowing it back toward the Marshals.

Q. Did he tell you how far away he was from the scene of the rioting?

A. He told me he was in and out of the student groups, that he mingled in as close as he could. In fact, sometime he would be in the midst of a group of students who were yelling taunts and jeers at the Marshals.

Q. Did he give you a briefing as to the lay of the land?

A. Well,—

Q. How far the distances were, we will say from the Confederate Monument to the dormitory, when he was making the fifteen minutes reports?

A. I don't remember if he gave me a briefing on the distances or not. I know that it seems to me that he said [fol. 133] it was just a short distance.

Q. All right. Go ahead then.

A. Then, he came to the telephone, and said that General Walker had talked to the students, the rioters, and then had led them on a charge on the Marshals.

Q. That Walker had talked to the students, and then led them on a charge against the Marshals?

A. Yes, sir; walked to the front of the charge, and led it against the Marshals.

Q. All right. Go ahead. Tell to the best of your recollection, the rest of his report.

A. And he told me—

Q. Excuse me. Right there, see if you can convert this information that he gave you about Walker talking to the students, and then led them on a charge against the Marshals. Can you convert that into terms of a report that you passed on for use on the wire service?

A. Well, since I was not actually writing any of the material that he was reporting, I was taking notes, and passing them on to Tom Dagard, who I believe you talked to yesterday, and he was doing the main overall wrap up.

Q. All right. Go ahead, Mr. Thomas.

A. I remember, with the incidents involved about the troops being sent in and so forth, we were putting out almost a continuous news lead to the story, and I remember [fol. 134] calling to Tom, who was no more than ten feet away from me, that General Walker had just led the charge of the students against the Marshals.

Q. Is this Tom Dagard?

A. Yes.

Q. All right. Go on.

A. And he rushed over and took my notes from the typewriter.

Q. Yes?

A. And I asked Savell to give me as much detail on the information as he could. I can refresh my memory by going in here and looking at this report.

Q. Well, we will get to that in a minute, but just to the best of your recollection now, give us the details that he gave you.

A. He said that Walker had climbed on the Confederate Monument and talked to the students, and said something to them about if they retreated and went home, they would be cowards, that they should stand up and fight.

Q. All right.

A. And then that he got down from the monument and started walking toward the Marshals and the students followed behind him, and he led the group of yelling, screaming, brick-throwing group with him as close to the Marshals as they could get, until they were turned back by tear gas.

[fol. 135] Q. Now, was that the first real or formal charge?

A. No, sir. There had been other charges earlier in the night. He had given a report that cars were being set fire to. I can't, at this time, recall whether this was—I don't want to say I am certain, but it seems to me that the French newsman—

Q. Guillard?

A. He had been found before, or it may have been after.

Q. Did Savell report to you the effect that the speech Walker made from the monument had on the students before this charge?

A. He just said that they seemed to be in agreement with what he said, and ready to follow him.

Q. And did he say whether or not, prior to the time Walker had spoken to them and got an agreement, that the students were able to organize and present a mass charge, or was it sporadic activity up until that time?

A. I believe that he said that it was more of a sporadic activity, more of a mob activity. When General Walker first walked into the group, it seemed more organized.

Q. Now, after Walker had appeared on the campus, and made his speech from the monument, the charge became more organized, did it?

A. Yes, sir.

[fol. 136] Q. Would you say it became more effective? You may refresh your recollection from your wire releases there if you like. You said it became more effective after this speech?

A. I don't recall him saying one way or the other as to where it was more effective, but I think from his reports that the charges were more in the nature of a protest. And you can say whether a protest is effective or not, well—At times the Marshals were forced to sort of re-group, and several of them, of course, were wounded and injured by flying objects, but the students—

Q. Have you ever been on the Ole Miss campus?

A. Yes, I have.

Q. Had you been, as of that time?

A. No, I had not.

Q. But you are now familiar with the general layout of Ole Miss campus?

A. Yes, sir.

Q. I am going to hand you this, I believe there is a plat here in the deposition that you may use to refresh your recollection. Here is one right here."

Mr. Watts: Mr. Gooch, do you have that big plat available we agreed on?

Mr. Gooch: Yes, sir, it is outside.

Mr. Watts: Can we bring it in?

[fol. 137] Mr. Gooch: It will take the easel to put it on.

The Court: That is a magnetized board. I have some magnets. If it is not too heavy it will hold it on the blackboard. We can try it.

Mr. Watts: Yes, may I obliterate my rather miserable architectural effort here? It is not in evidence.

The Court: Yes.

Mr. Watts: At this point in the deposition, after pointing to a plat similar to this the question was asked the witness:

"Q. Is that the general lay of the land as you understand it?

A. Yes, it is.

Q. Did Savell report to you, or have you since learned, that the way Savell came was from the monument, around the Lyceum Building to Booth Hall, which is about six hundred yards?

A. No, I don't think that I know where Booth Hall is right there. Now you have him coming around to—

Q. Well, his testimony was when we took his deposition was that. . . ."

Mr. Gooch: Now, if the Court please—

Mr. Watts: —that's right. I think that is—

I am skipping from Line—Page 19 through the remainder [fol. 138] of that page.

Mr. Gooch: On Page 19?

Mr. Cravens: What line number?

Mr. Watts: I am skipping the remainder of that page.

Mr. Cravens: What line number?

Mr. Watts: 17. Now starting on Page 20, the question on Line 3, "Now; he then reported to you on this occasion when he first reported that Walker had led the charge, that Walker had made a speech from the monument, and that that speech seemed to give the boys more organization. Then after the speech, he led the charge?"

A. Yes, to the best of my knowledge.

Q. He made this report to you about the speech and the charge in the same telephone conversation and not in two?

A. In the same conversation.

Q. Right. Now, in other words, he didn't come and tell you that Walker was making a speech, and then come back and say that he was leading a charge?

A. No, sir.

Q. Nor did he tell you that Walker was leading a charge on one telephone conversation, and come back and tell you in a subsequent conversation that he was making a speech? [fol. 139] A. To the best of my knowledge, no.

Q. All right. Now, what next report did Savell give you about Walker?

A. I don't recall Savell giving me any more reports about Walker that night. I asked him later on if he saw General Walker any more, and I truthfully can't recall whether he said yes or no."

Mr. Watts: The remainder we will reserve.

Mr. Gooch: Where did you stop?

Mr. Watts: I have terminated on Line 3, Page 21.

The Court: Do you have anything to offer at this time.

Mr. Gooch?

Mr. Gooch: No, sir.

Mr. Watts: Call Richard Sweat.

[fol. 140] RICHARD HARVEY SWEAT, called as a witness by the Plaintiff, having been first duly sworn, testified as follows, to-wit:

Direct examination.

By Mr. Watts:

Q. Will you state your name, please, sir?

A. Richard Harvey Sweat.

Q. How old are you?

A. Twenty, sir. Be twenty-one in September.

Q. Where do you live?

A. Karnes, Mississippi.

Q. Were you raised in Karnes?

A. No, sir, I was raised in Tennessee, in a place about twenty miles from Karnes.

Q. Are you at this time a student at the Mississippi University?

A. Yes, sir.

Q. Were you such a student in September and October of 1962?

A. Yes, sir.

Q. What courses, Mr. Sweat, were you pursuing in college?

A. Pre-law.

Q. How long have you been at the University of [fol. 141] Mississippi at this time?

A. At that time, sir?

Q. Yes, sir.

A. I had been there about a year and a half.

Q. And that was almost a year and a half ago?

A. Yes, sir.

Q. So, you have now been at Ole Miss University approximately three years?

A. Yes, sir.

Q. Are you familiar with the lay of the land at Ole Miss University?

A. Yes, sir.

Q. Will you please take the pointer in front of you, take it in your hand, and step over to this chart.

May we agree, if Your Honor please, that this chart will be offered in evidence as the—actually, it is a joint exhibit. I don't know what the Court's procedure is.

The Court: If there is an agreement you can offer it. If you agree to it, both of you can use it.

Mr. Watts: All right, sir.

Mr. Gooch: That is satisfactory.

Mr. Watts: What, Mr. Reporter, is the next exhibit?

Mr. Nuss: Number 11.

[fol. 142] (Chart marked Plaintiff's Exhibit 11.)

By Mr. Watts:

Q. Mr. Sweat, you have before you Exhibit 11 which is a scaled reproduction of the University of Mississippi campus. Do you see a railroad at the right side of the chart about even with your chin?

A. I do.

Q. As it goes on forward?

A. Yes, sir.

Q. The top of the chart, of course, is north. Do you see a street, University Boulevard, as it crosses the railroad right about your chin? Much lower. Right there (indicating).

A. Here at the avenue, sir.

Q. Yes, sir, University Avenue.

A. Yes, sir.

Q. Do you see it proceeding westward?

A. Yes, sir.

Q. Put your pointer at the intersection of University Avenue and the railroad.

A. (Witness complies.)

Q. And as you proceed on westward with your pointer now about how wide is that street at this point?

A. This street?

Q. Yes, sir.

[fol. 143] A. Oh, it is wider than this room.

Q. A good big wide boulevard-type street?

A. Yes, sir.

Q. Proceeding on westward, and do you see an installation there called the Circle?

A. Yes, sir.

Q. Do you see a dot which is to the left of your pointer right there?

A. Right there (indicating).

Q. What is that installation?

A. That is the Confederate Monument.

Q. Will you describe please that Confederate Monument for the benefit of the Jury who have never been there?

A. The Confederate Monuments are quite a thing in Mississippi. Every town or every small community has one, in dedication to the boys who marched away in the War between the States. And Ole Miss has this particular monument dedicated to the University Grays that marched away in the War between the States. And it is a tall monument on a granite base that has a Confederate soldier standing there holding his rifle like this (indicating) and looking out on University Avenue.

Q. Does it have a base about two feet above the level of the ground?

[fol. 144] A. Yes.

Q. And then as you proceed to the right of that Confederate Statue will you identify some of the buildings?

A. This is the old Geology Building, formerly the old Library Building also. This is the YMCA Building.

Q. Wait just a minute. This YMCA Building will figure very prominently in the evidence. I think it is well to orientate the Jury at this time and identify it. Is there a street between the Circle and the YMCA Building?

A. Yes.

Q. What is that?

A. That is the Grove Loop.

Q. What is the street to the southwest of the YMCA Building?

A. This is still University Avenue.

Q. University Avenue curves around and makes a loop?

A. Yes, sir.

Q. What is the next building to the west of the YMCA Building?

A. The Fine Arts Center.

Q. And as you proceed on then to the southwest, around University Avenue, what is the next big building you encounter?

A. The Peabody Building and the Fullerton Chapel, [fol. 145] but it sets back.

Q. What is this building (indicating) directly west of the Circle?

A. The Lyceum Building.

Q. Did that building have any personnel around it the night of this incident?

A. Yes, sir, this building was ringed by 700 Marshals that night.

Q. Now, then, moving onto the southward, what is the next big building?

A. The next building is the Chemistry Building. Chemistry and Pharmacy Building, I might add.

Q. Then circling back toward the east, what is the next building?

A. This is Carrier Hall. This is the engineering building.

Q. All right, sir.

A. Right here (indicating).

Q. Then, returning then to the point of origin, what are the rest of the buildings?

A. Well, the Chemical Engineering Building sets right here, and the new Science Building, Hume Hall, sets right here.

Q. All right. Now, on this night in question, September 30, 1962, was the Science Building, Hume Hall, in the [fol. 146] process of construction?

A. Yes, sir.

Q. Is there any installation, street lights or anything of the kind just north of Hume Hall?

A. Yes, sir, a street light sets right here (indicating chart).

Q. Where is that with reference to the Confederate Statue?

A. With the Confederate Statue, it sets a little southeast.

Q. It is southeast of the Confederate Statue?

A. Yes, sir.

Q. All right, take your seat on the witness stand.

Now, Mr. Sweat, were you present on the Ole Miss campus on the night of September 30, 1962?

A. Yes, sir, I was.

Q. Where had you been?

A. I had been home. I was returning back from home.

Q. Had there been some school activity in Jackson that day?

A. There had been a football game the Saturday before, I believe.

Q. And about what time did you arrive back on the campus?

[fol. 147] A. I got back on the campus around 4:00 o'clock that evening.

Q. What day of the week was that?

A. This was on Sunday.

Q. And at the time you got back on the campus were the students there in force, or what was the condition?

A. No. Ordinarily the students at Ole Miss arrived back at the campus from the week-end, usually about that time, around 4:00 or 5:00 o'clock, and they were just beginning to come in.

Q. Mr. Sweat, when you arrived on the campus where did you go?

A. Well, when we arrived on the campus the first thing we heard, we were stopped by some boys and we heard the first thing we knew, we had been occupied, that we had been sold out, and that the Marshals were already

here, and the Army was on the way, so we went on up to the Lyceum Building.

[fol.148] Q. Now, who is "we"?

A. This boy that rode with me, Jimmy Coggan. He is, also, from Torrance, Mississippi.

Q. All right, sir. Continue then with what occurred.

A. We stopped at the Lyceum Building. The Marshals hadn't ringed the Lyceum Building at that time. We stood around and talked and then a few minutes later, trucks drove up with Marshals in the back of them. These were Army trucks. Marshals standing in the back of these trucks had on white helmets, a vest—some people say they were bullet-proof vests, I don't know.

The vests had tear gas canisters in them and many of the Marshals carried big tear gas guns.

The trucks pulled up around the University Loop in front of the Lyceum Building. The tailgates were dropped and the Marshals got out and immediately ringed the Lyceum Building.

Q. Were those typical six by six Military-type trucks?

A. Yes, sir, they were all Military trucks.

Q. Go ahead.

A. The Marshals got out. They formed a double line in the front of the Lyceum Building and single line running around the back.

The Marshals stood shoulder to shoulder. They didn't say anything. You could ask them something. A Marshal [fol. 149] wouldn't say anything to you.

This was a curiosity to the students. Many of the students immediately came down. People from the Student Union Building got word that the Marshals had ringed the Lyceum Building and the people came down.

I took my things on back up to the room and took the boy that had ridden with me over to the fraternity house and he put his things up and we returned.

By this time the word had gotten all over the campus. Boys who had seen it were running around to the fraternity houses and to the dormitories, passing the word.

This made a lot of people angry because the Lyceum Building holds a very special place on the Ole Miss campus. And to see it ringed by Marshals, naturally caused resentment and drew a crowd.

Q. Could you roughly estimate the size of that crowd at that time?

A. Well, the size of this crowd at this time, I would say, three or four thousand, because this included all the students that had returned and it was a tremendous crowd down there finally, toward late evening.

Q. Now, roughly, Mr. Sweat, where was that crowd distributed?

A. This crowd was distributed, running from the En-[fol. 150] gineering—I mean the Chemistry-Pharmacy Building in front of the Lyceum Building—

Q. Now, Mr. Sweat, until the Jury gets these places pretty well fixed in their mind, I wish at this point you would take your pointer and again show them just where these installations are.

A. The crowd stretched from this point of the Chemistry-Pharmacy Building on around. We were in the street then. On around on University Circle, down here in the front of Peabody, almost to the side of the Lyceum Building.

Q. Now, where is Labuve Hall

A. Labuve? Labuve is right here.

Q. All right, sir. And at that time were there any Highway Patrolmen in the area?

A. Yes, sir, there were Highway Patrolmen.

Q. I wish you would point out to the Court and Jury where the Highway Patrolmen were stationed.

A. At first, the Highway Patrolmen, of course, were at the exits. But then the Highway Patrol moved in and they were stationed out in front with the students.

Q. Now, coming eastward from the Lyceum Building, who were the first personnel that you would encounter?

A. Coming eastward?

Q. Yes.

[fol. 151] A. The first personnel you would encounter coming this way would be students.

Q. No, I mean walking out of the Lyceum Building.

A. Oh, walking out of the Lyceum?

Q. Yes, sir.

A. The first personnel you would encounter would be Marshals.

Q. Do I understand there was a double ring of Marshals?

A. Yes.

Q. Who would be the next personnel?

A. The next personnel would be the Highway Patrol.

Q. Now, what was the number of this Highway Patrol? Can you give us a rough estimate?

A. I'm not sure about that, sir. I would say 200 probably.

Q. Was there an interval or distance between the U. S. Marshals and the Highway Patrol?

A. Not at first. Now, when the Highway Patrol moved in, they formed a line between the students and the Marshals.

Q. All right. What was the distance between the line of Marshals and the line of Highway Patrolmen?

A. At first, the distance was about fifteen feet. Ten—ten, fifteen feet.

[fol. 152] Q. And what was the distance then between the Highway Patrolmen and the students?

A. The students were right up against the Highway Patrolmen. They were wanting to get up closer but the Highway Patrol wouldn't let them.

Q. All right, sir. You may return to your seat.

Now, continuing, please give this Jury as accurate a word picture and a description of what you saw and what occurred from that time on until the Highway Patrol personnel left the campus.

A. Well, the Highway Patrol moved in, got between the students and the Marshals. The students—a lot of students were mad by this time because the Marshals had ringed the Lyceum Building. They resented this. And there was opposition growing, discontent. People were thumping cigarette butts at the Marshals and throwing pebbles at

them. I say "pebbles", now. No rocks like a lot of people say. There are no rocks on the University Loop. It's all paved. You won't find rocks. You will find pebbles. Students were throwing that.

[fol. 153] Well, the highway patrol moved in between and the men started to tell us just to calm down, no reason to get excited.

Chancellor Williams came out, pleaded with the students, said break up, said go back to your dormitories, you can't do any good down here.

Dean Love walked among the crowd, trying to persuade them to break up but the crowd wouldn't do it. They felt by this time that things had gone too far.

Q. Now was this daylight or dark?

A. This was still daylight.

Q. All right, sir. Now where were you roughly at that time?

A. Just out in the crowd, milling around in front of the Lyceum Building.

Q. Now is that in the area marked as the circle?

A. Yes.

Q. All right, sir, go ahead.

A. Toward late evening, almost at dusk, the highway patrol suddenly formed a straight line and started pushing the students back. The reason they were doing this is because the trucks—

Mr. Gooch: Now we object to the reason.

Mr. Watts: That's right, you possibly don't know the reason. You're just a pre-law student, Mr. Sweat, not into [fol. 154] the law yet. That is not proper evidence, so go ahead—

The Court: Just tell what you saw.

A. All right, I will. They were pushing us back. Well, I could tell you why they were pushing us back.

Q. But what went on in the Marshals' mind is not proper evidence so you just tell what you—

A. Well, they were pushing—anyway, they pushed us back.

Q. You were pushed back?

A. We were pushed back, and while they were pushing us back, they had their backs to us and the students were, well, they were—well, they were allowing, you know, the highway to push them back on the grass. What they evidently were wanting to do was to form an empty zone there between the Marshals and the students.

Q. And after they pushed you back, about how wide was this empty zone?

A. Well, while they were pushing us back, that's when the riot broke.

Q. Tell us what happened?

A. Well, while they were pushing the students back, suddenly the Marshals leveled tear gas and opened fire.

Q. Did you hear a command?

A. No, I didn't hear a command. I was out in the crowd. [fol. 155] I wasn't paying any attention to the Marshals. I had turned around, you know, to see where I was stepping. And all of a sudden we had tear gas.

Q. At that time was there any violence of any kind existent?

A. No, sir.

Q. Describe to the jury to the very ultimate of your recollection exactly what you saw and what occurred.

A. Well, the Marshals opened fire with tear gas. It threw a thick cloud of smoke all over the students and the highway patrol was completely stunned. Some of the men even got hit in the back—

Mr. Gooch: If the Court please—

Mr. Watts: Just a minute.

The Court: You don't know whether they were or not. You testify to what you saw and not what you are guessing at.

The Witness: Well, that's just what I saw.

The Court: You don't know whether they were stunned or not.

The Witness: One was hit in the back, sir.

The Court: Well, you just testify to what you saw.

The Witness: Yes, sir.

By Mr. Watts:

Q. Tell us, Mr. Sweat, about that one that was hit in the back. What did he look like?

[fol. 156] A. He was a big, heavy-set fellow.

Q. After he was hit, was he horizontal or vertical?

A. He was still standing up but I wouldn't care to repeat what he said.

Q. Well, don't repeat what he said just tell what he did and what you saw.

A. Well, he ran down with the students. All the students ran when that went off. All the students ran down to the Confederate statue.

Q. Now is that eastward from the Lyceum?

A. That's towards the east, sir.

Q. About that time what—could you roughly estimate the size of this group of students?

A. It was still—it was still a pretty good sized crowd.

Q. Were all the students in the circle or were some of them elsewhere?

A. Well, no, not all the students were in the circle. Most of the students, like I say, were there in front of the Peabody Building and around near Carrier Hall.

Q. Would that be northwest of the so-called circle?

A. That would be north, northwest of the circle.

Q. All right, sir.

A. Some were over at the YMCA Building, too.

Q. Go ahead and describe the events.

[fol. 157] A. Well, the students ran back to the Confederate statue. We milled around. We didn't know what was happening. We got together again and we thought somebody had done something, you know, that—

Q. Now Mr. Sweat, was there any leadership at all of this group of students?

A. No, sir.

Mr. Gooch: If the Court please, we believe that is a conclusion, that he can tell exactly what he saw.

The Court: Sustained. I instruct the jury not to consider it for any purpose.

By Mr. Watts:

Q. Tell the jury what was the organization of this group of students, how they reacted and to whom they looked for instructions and orders.

A. Well, they didn't look to anyone. They were completely bewildered. They didn't know what to do. After that first volley went off, the students got together and they started walking back up towards the Lyceum Building. That's west.

They started walking back up towards the Lyceum Building and suddenly the Marshals charged again and this time drove all the students that were in the circle past the Confederate statue and back down University Avenue almost to the Journalism Building.

Q. And what happened to the highway patrolmen then?

[fol. 158] A. Well, some were with us but not all of them. I don't know what happened to the rest of them. There were a few down with us though.

Q. And what was the attitude and demeanor of the crowd at that time?

A. Well, after the second volley went off the crowd was ready to fight then. The boys started picking up bricks and bottles and started back toward the Marshals.

Q. Now as they went back describe to the jury how they went back and in terms of just how they looked to you.

A. Well, the way it looked to me, was that there were a few students that—after the second volley went off and we had been driven back down, they picked up some bricks and bottles and said, "We've had it, we've had it, we've had enough. Let's go back and fight."

And the people started picking up things then and the students went up almost as one body at that time, just together.

Q. Uh-huh.

A. And the Marshals started a charge again and we charged back this time.

Q. Uh-huh.

A. And pushed the Marshals back up to the Lyceum Building. This was tried getting all the students together for one, you might say, big student push.

[fol. 159] We tried that two or three times but it's too costly because each time we tried it, get up near the Lyceum Building, the Marshals would just level their tear gas guns and cut loose with a volley, so you couldn't bring a large group up near the Lyceum Building in what you might call a charge.

Q. And then what happened?

A. The students fell back to that Confederate statue. A lot of people—a lot of people really wanted to defend that statue. I don't know why. They said, "By God, this is ours. We're holding." And they did. Students milled around. They busted up concrete benches in the circle, boys went down to Hume Hall. That was the new Science Building under construction then.

They started hauling back bricks, anything you could get your hands on, coke bottles, or anything. You would pick it up, you would run back up to the circle, you would have to go through the tear gas to chunk.

Q. You said boys would do that. Now explain to the jury how that was organized or how it operated.

A. Well, everyone was on his own, really. If you wanted to throw something, you would have to get your own what you might call ammunition.

You might start out and there would be about four or five boys and they would be going your way, too, and you [fol. 160] would say, "Well, come on, let's go," and just whoever would fall in and go—that's what your charge would consist of. Now then—

Q. There was no organization?

A. There was no organization.

Q. How long did that condition continue?

A. This continued all night long.

Q. Was there ever any organization, as you say?

A. No, sir.

Mr. Gooch: If the Court please, we object to that as a conclusion.

The Court: Sustained. The jury is instructed not to consider it for any purpose.

By Mr. Watts:

Q. All right. Explain to the jury what you observed then with respect to this subject you are talking about from there on out.

A. To the riot, sir?

Q. No, this matter of the group of students and the size of the group and their actions?

A. Well, groups of students would get together. Probably the largest group you would see charged would be a group of 20. Some boys—some boys hit upon the idea that if you charged in a small group, the Marshals would charge you back; you could draw them in between two buildings where some more boys would be and you could jump them.

[fol. 161] Well, this worked, this worked for a little while. But the Marshals caught on to this and they wouldn't do that any more.

So the boys—boys throwing rocks and bottles extending all the way down from the Chemistry Pharmacy Building all the way through the grove on up to the YMCA Building were throwing and not more than groups of 20—groups of five, six, seven, things like that.

Sometimes you would just go by yourself and throw.

Q. Do you have any idea roughly of the time when the Marshals first fired the gas?

A. No, sir, I don't. I left my watch back in the room and I wasn't too concerned with time at that time.

Q. All right, sir. Did you at any time during the course of that evening encounter an individual whom you recognized from pictures or anything else as General Walker?

A. Yes, sir, that night.

Q. Could you take your pointer and point out to the jury with respect to the Confederate monument where you first saw General Walker?

A. When I first saw General Walker, he was standing about—well, I would say two to four feet right off the sidewalk here.

Q. Now what direction is that from the Confederate [fol. 162] monument?

A. Well, from the Confederate monument, it's still south, southeast.

Q. All right, sir. Now about how far would you say it was to the monument, if you could estimate?

A. From where I saw General Walker to the monument?

Q. Yes, sir.

A. Twenty feet.

Q. Now then as you have been doing and to the very best of your recollection, try to reconstruct in your mind exactly what you saw and what occurred after General Walker appeared at this point and you saw him, and tell the jury just what you saw and what occurred.

A. Well, my attention was drawn to General Walker. The cry went up, "General Walker is here, General Walker is here. We have got a leader."

And there was a crowd there at that time because we had just finished beating up a reporter—no, not a reporter. He was a chemistry professor. He was down there taking names and he was recognized. The boys didn't want reporters around because they feared if they got their picture in the paper or something, you know, it could get them in trouble—and especially professors taking names. That didn't go over too well either.

Q. You didn't like that?

[fol. 163] A. No, sir. So they had just finished beating him up and escorting him down University Avenue and there was a small crowd down there. And the cry went up, "General Walker is here."

I was standing just a little west of the statue. I looked around and saw General Walker.

Q. Now was this position where you were west of the statue in the so-called circle?

A. Where I was?

Q. Yes.

A. Yes, sir.

Q. All right, go ahead.

A. I looked around and saw General Walker. Boys were running up to him, shaking his hand. They wanted to meet him. They just wanted to see what he was like. People had heard of General Walker but we hadn't met him. I was curious, too.

I went down where he was. There was still boys charging at this time. A lot of people didn't know Walker had arrived. Just the people down in there knew it.

Q. Uh-huh.

A. Walker milled around in the crowd with the boys, shaking hands. The boys kept asking him, "Where are your volunteers?"

And he wouldn't answer that.

[fol. 164] And they said, "Well, General, what should we do? Give us some advice."

And he would just shake his head.

And the boys began to start wondering about him then. They said, "Well, what's he here for," you know. They thought that—

Mr. Gooch: We object.

By Mr. Watts:

Q. You can't say what they thought?

A. Well, anyway, I thought—

Q. You can say what you said.

Mr. Gooch: Whatever you say is fine.

A. I thought when I first—my first impression, when General Walker came up, I thought, "Well," I said, "Here we have got a leader." I said, "We have got a leader finally, somebody can lead this thing."

But I found out that General Walker wouldn't lead it. The boys found this out, too. And some of them drifted off, you know, and some of them were right resentful at it—

Mr. Gooch: If the Court please—

Mr. Watts: We withdraw it.

The Witness: I'm sorry. I'm saying the same thing again.

Mr. Gooch: We are going to protect this record regardless of the levity of this matter.

The Court: I understand.

[fol. 165] Mr. Gooch: And I object to the remarks of the witness. He's been cautioned about it and I respectfully request the Court to advise the witness to talk about things he knows.

The Court: That's what I'm getting ready to do, Mr. Gooch.

Mr. Watts: That's right.

The Court: Mr. Sweat, you will find, after you get through law school, there is such a thing as a conclusion. You can't look into somebody else's mind and determine what they think, see?

The Witness: Yes, sir.

The Court: So in describing your story, limit yourself to what you saw, what you actually observed and not what you think somebody else thought or observed.

By Mr. Watts:

Q. That's fine. Now then, son, go ahead with your description to the jury without me bothering you. You just tell this jury exactly what you saw and what occurred.

A. People were still milling around. Boys were still coming back from the charges they had made. They were coming right past Walker down to Hume Hall.

They didn't even recognize General Walker, a lot of them.

Mr. Gooch: Well, if the Court please—

[fol. 166] The Witness: I know they didn't because my roommate was one of them.

Mr. Watts: Just a minute, son.

Mr. Gooch: If the Court please—

Mr. Watts: We withdraw that.

The Court: Mr. Sweat, you are going to be in trouble with me in a minute.

The Witness: Yes, sir, I'm sorry. I just can't—

The Court: And I advise you not to do that.

The Witness: I just keep messing up, huh?

The Court: Yes, you just keep messing up. Now you just testify to what you saw.

Mr. Watts: Yes, sir.

The Court: And what you observed?

The Witness: Yes, sir.

By Mr. Watts:

Q. That's fine. Just go ahead and tell the jury what you saw.

A. The rumor was going around in the crowd, verbal rumor—

The Court: Now did you hear or see the rumor?

The Witness: Yes, sir, I heard the rumor.

The Court: You saw the rumor?

The Witness: Yes, sir.

The Court: What does a rumor look like?

The Witness: The rumor was passed by word of mouth—

[fol. 167] The Court: Did you see it? You heard it.

The Witness: I heard it.

The Court: You testify to what you saw.

Mr. Watts: All right, go ahead.

A. What I saw?

By Mr. Watts:

Q. Yeah. Just tell what you saw. Don't tell the rumor.

A. Well, I saw students pleading with General Walker to get up and speak because they thought—well, I take that

back. Anyway, we thought—I thought Governor Barnett had sold us out.

There were fights going on because of that. Finally General Walker did get up, stepped up on the base of the statue—

Q. Just a minute. Before he stepped on the statue, I wish you would go up there and take your pointer and point out to the jury where he went from the first place under the street light where you saw him. Just trace his course on the chart.

A. Well, when I saw General Walker, like I say, he was standing somewhere right in here.

Q. About how long did he stand there?

A. He stood there—I couldn't say, but he stood there a little while because there were a lot of boys that wanted to shake hands with him.

[fol. 168] He walked up towards the YMCA Building like he didn't know where he was—that's the impression I got.

He stopped and looked around and then he came back. Then he stepped up near the statue over here to the south of it, and he walked just a little north—I mean just a little west of it, stopped and he looked up towards the Lyceum Building.

And the boys were still around him, telling him, well, what was going on and everything.

Q. Was anyone specifically with Walker at that time?

A. Specifically with Walker?

Q. Yes, sir.

A. I didn't notice anyone.

Q. Yes, sir. All right, go ahead and tell the jury, point out as nearly as you can roughly what the furthest west point he reached may have been.

A. I would say just about here.

Q. Now in terms—what is that installation in the middle of the circle?

A. That's the flagpole.

Q. And is that about, oh, a little over half-way between the Confederate monument and the west end of the circle?

A. Yes.

Q. Now in terms of fractions, roughly how far from the [fol. 169] monument to the flagpole did General Walker get on that occasion?

A. I wouldn't say quite half-way.

Q. All right, sir. And then how long did he stay in that position?

A. Just a few minutes.

Q. All right. What occurred then?

A. The thing was still going on.

Q. All right. You can go back then to your seat.

A. People were still rioting. Tear gas was still being fired.

About that time some boys over near the Chemistry Pharmacy Building had just made a charge and the Marshals had leveled some tear gas over there.

Q. And then where did General Walker go?

A. Then he came back to the, near the Confederate statue.

Q. Now up to that time, did General Walker lead the charge?

A. No, sir.

Mr. Gooch: We object, if the Court please.

Mr. Watts: Just a minute now, I would—

Mr. Gooch: A conclusion on the part of this witness. He can testify what happened.

Mr. Watts: May counsel approach the bench?

[fol. 170] (Conference at the bench.)

Mr. Watts: That's what I wanted to get straight. Loan me your pointer there, son.

By Mr. Watts:

Q. Now, son, as General Walker moved from this point here just northwest of the street light and southeast of the Confederate monument over to this point you have marked about not quite half-way to the flagpole, what gait did he travel?

A. He walked.

Q. He did. What type of a walk?

A. Just a slow, casual walk.

Q. Was anyone around him?

A. Yes, sir, students were still around him.

Q. Was anyone between him and the Marshals around the Lyceum at that time?

A. Oh, yes, sir.

Q. Well, would you estimate for the benefit of the Court and jury what the size of the group was between Walker as he walked in this direction and the Marshals?

[fol. 171] A. That would be hard to do, sir, because a lot of the boys in the building—there were some up there breaking up benches, some had just come back from the charge, and there was tear gas smoke. I couldn't be too sure. But just as a guess—

Mr. Gooch: If Your Honor please, we will object to the guess.

Q. That is all right. Give us your best judgment.

A. This is just a guess.

Q. Don't call it a guess. Give us your best judgment.

A. My best judgment would be forty or forty-five people in that area.

Q. All right, now, what was Walker's actions with respect to anyone on beyond him toward the Marshals?

A. There was none.

Q. Did he have any contact with them?

A. Any what?

Q. Any contact with the people out in front that were throwing things at the Marshals?

A. No, sir.

Q. Did he say anything to them?

A. No, sir.

Q. As nearly as you possibly can I wish you would report to the Jury everything Walker said to you boys [fol. 172] around him after he appeared at this point, until

he started backward up from the position between the Monument and the flagpole?

A. Well, mainly what he said, people would introduce themselves, he would shake their hands, say, "Glad to meet you," or something. People would ask him, "General, what should we do, the Marshals have got the Lyceum Building ringed now, shouldn't we get some boys and go over here and do this or do that?" And General Walker wouldn't say anything. And one boy really got mad about it, he said—

Mr. Gooch: Well, now—

By Mr. Watts:

Q. Don't get into what the other boys said.

A. Well.

Q. Did you at any time—strike that.

Did at any time during this interval between your first observing Walker as he came on the campus and the time when he came up there and walked back toward the monument, did anyone at this time have ahold of his arms, in this manner (indicating)? As he walked.

A. No, sir.

Q. Did you notice a rather portly heavy-set individual that came up to the group about that time?

A. No, sir. I did notice one. He was from Columbus [fol. 173] though. I saw him earlier that evening.

Q. Now, then, did—did or did not General Walker—strike that.

Did you hear one identified man query Walker as he approached the group, "General, will you lead us to the steps?"

A. Yes, sir. I don't know that that is the man you are talking about, but I did hear that question asked.

Q. Did or did not you observe Walker as, "... he loosened his tie and shirt and nodded 'yes' without speaking?"

A. No, sir.

Q. Did that occur?

A. No, sir.

Q. Did he confer with a group of about fifteen persons who appeared to be riot leaders?

A. Well, now, that was probably the group I was in.

Q. All right. Tell the Jury exactly what happened.

A. Well, if the President of the University thought I was a riot leader I wouldn't be in school very long. This was after the speech.

Q. That was what I was trying to get the timing on.

A. This is after the speech.

[fol. 174] Q. Well, now, to further fix the time on it, did Walker, after he came back from the position there approximately half way between the monument and the flagpole, did he make a speech from the monument?

A. Yes, sir.

Q. And did anything unusual occur in University Avenue just south of the monument just before he made the speech?

A. Just before he made the speech?

Q. Yes.

A. There was a lot of confusion down there.

Q. Was there any vehicles?

A. Not that I remember. Down near the Journalism Building.

Q. At any time prior to this incident you are talking about when Walker made the speech did Walker assume command of the crowd estimated at a thousand?

Mr. Gooch: Leading and suggestive.

By Mr. Watts:

Q. All right, I was just going down the terms but, all right, we will not proceed that way then.

All right, you say Walker came back from that position and made a speech?

A. Yes, sir.

Q. Now, have you outlined to us everything that you [fol. 175] remember that he did and that you saw him do

between the time he arrived on the campus and the time he made the speech?

A. Well, I think—now, he didn't go directly from there to the Confederate Monument. He came back and was down around the Confederate Monument, and then later made the speech.

Q. Was tear gas fired at the group where he was just—strike that.

I see counsel is going to object and I don't want to ask anything remotely objectionable. All I want you to do is tell the Jury what you saw and what happened. Tell us about any tear gas being fired, if any, and where it was fired while he was up in the area west of the monument.

A. West of the monument?

Q. Yes.

A. There was still tear gas up from the flagpole, or up to the Lyceum Building, was a flat of tear gas. This was pretty thick. You could see through it every now and then. Now, there wasn't too much of a breeze that night, so it kind of hung over in the Grove. When this tear gas would clear up the Marshals would let go another salvo of it and build up a cloud.

Q. How close were you to Walker?

[fol. 176] A. Well, I was pretty close to him.

Q. How many feet?

A. Well, I was—I could reach out and touch him.

Q. Now, while you were in that position what was the nearest tear gas that came to you and to Walker?

A. The nearest tear gas?

Q. That is pellets that were fired.

A. There was one that landed over by the—facing the Lyceum Building, there was one that landed to the left of us over there near the street, almost. That was about the closest I remember. Of course, there were so many fired that night it would be hard to tell.

Q. Now, when Walker returned from that position to the area near the monument, what was his gait?

A. He was still walking.

Q. What kind of a walk?

A. It was just—my impression, just a casual stroll, just to look it over; things.

Q. And what were the students doing around him?

A. The students, by this time, had kind of, they were just—

Mr. Gooch: Wait a minute.

By Mr. Watts:

Q. What were they doing?

A. They were just walking along with him.

Q. That is what we are trying to get.

[fol. 177] A. Standing around him. Some people had just heard he was there.

Q. Don't tell us that, what they heard. And what was the gait of the students?

A. Oh, they were in a slow gait too. They were keeping up with him.

Q. What were the actions of the students in his immediate vicinity?

A. Well, they were just standing around him.

Q. Were any of that group participating at that time in throwing things at the Marshals?

A. No, sir.

Q. Now, then, describe to the very best of your ability what happened from the time you started back from the position west of the monument until he made his speech on the monument?

A. I am not too sure about that. Walker did come down to the monument and he stood around in that area and there were a lot of things still going on over around the Lyceum Building. I returned and watched that for a little while, but I know Walker stayed down in that area.

Q. Then, what did he do?

A. He made a speech on the statue.

Q. Would you outline please for the Jury to the best of your recollection what General Walker told the boys from [fol. 178] the statue?

A. General Walker got on the statue and he said something to this effect, he said, "You have a right to protest. It is guaranteed to you in the Constitution. This is not the way, it is the long way around."

He said, "You do have a right to protest, . . ." but he said something about, ". . . Cuba being yonderway." That is the best I remember.

Q. What was the reaction? Was there any sound that come from the students?

A. There was some jeers.

Q. What?

A. Jeers, boos.

Q. Then what happened?

A. Walker stepped down and the crowd dwindled off. Walker stepped to the right of the Confederate Monument and this is when I talked to him. He stepped down to his immediate right and he came passed me. This is now when the group of around fifteen boys were around Walker. The other crowds had drifted off.

Q. Tell us about that.

A. Walker stepped down and walked past, just a few feet west of the Confederate Statue; and stopped, and looked around, and he lit a cigarette, and—

Q. Are you sure of that?

[fol. 179] A. Yes, sir, I know he did because at that time I borrowed a cigarette from him.

Q. Did you have any cigarettes of your own?

A. Yes, sir, they were back in the room though. I didn't bring anything down with me.

Q. Then what happened?

A. We stood and talked with General Walker, some of us did, just a general conversation. We discussed politics. I asked him about his training program he had over in Germany and we talked about things like that; just a general conversation.

Q. What was going on further toward the west at that time?

A. Oh, further toward the west, the same thing. Boys in small groups started throwing at the Marshals and they were charging and coming back, and the Marshals were still shooting tear gas.

Q. What were the group of boys immediately around Walker doing?

A. The boys immediately around Walker were just standing around.

Q. Were any of them at that time throwing things?

A. No, sir.

Q. At this point, could you take the pointer there and show the Jury where this conversation took place?

[fol. 180] A. Right about in here (indicating chart). That is about southwest of the Statue.

Q. And about how long did that session there take place?

A. I would say twenty minutes.

Q. Where did Walker go from there?

A. Walker started out over this way (indicating), and I still stood there and watched him. I was watching him because a boy had asked me to keep an eye on him.

Mr. Gooch: Now—

By Mr. Watts:

Q. Don't say what the boy told you to do. Just tell us—

A. He walked up this way, (indicating), and stopped and stood around. He seemed to start back. At this point I lost him. I got interested in something else.

Q. Did you have any more contact with Walker from that time on?

A. No, sir, I didn't see him any more that night.

Mr. Watts: Take your seat. I believe that is all.

The Court: We will recess before cross examination. Ladies and Gentlemen, we will recess until a quarter until 11:00 by this clock in here.

[fol. 181] (Thereupon, Plaintiff's Exhibit No. 11, was marked for identification.)

Cross examination.

By Mr. Gooch:

Q. In September of 1962, you were approximately 18 years of age, is that correct?

A. No, sir.

Q. Nineteen?

A. Nineteen.

Q. All right. You had been a student at the University of Mississippi, I believe you testified, for about a year and a half?

A. Yes, sir.

Q. Now, do you recall when the school year opened in the year 1962?

A. Yes, sir.

Q. When was that?

A. In September.

Q. Do you remember what date?

A. No, sir, I am not sure about that.

Q. Do you remember what date, about what date, you got on the campus for the Fall Semester for 1962?

A. What day I got on the campus for the Fall Semester?

Q. That's right.

A. No, sir, not the exact date.

[fol. 182] Q. Well, prior to the time that the Fall Semester began at Ole Miss in 1962, it was general knowledge in the State of Mississippi and elsewhere as to the Meredith case, was it not?

A. Yes, sir.

Q. You were aware, when you entered school in September of 1962, that the United States Court of Appeals had ordered Meredith on the campus in the status of a student, were you not?

A. Yes, sir.

Q. You knew that Governor Ross Barnett exercising his prerogatives as Governor of the State of Mississippi was using considerable force to prevent the entry of Meredith into Ole Miss, did you not?

A. Yes, sir.

Q. You knew that Meredith, on more than one occasion, had been turned away from registering in Ole Miss by both Governor Ross Barnett and Lt. Governor Johnson, did you not?

A. Yes, sir.

Q. Were you on the campus on September 25th, 1962, when the Governor, in connection with certain law enforcement agencies, refused to admit Meredith to Ole Miss?

A. Yes, sir.

Q. At that time, an angry resentment came up from the student body in support of Governor Ross Barnett, did it not?

[fol. 183] A. A resentment to Governor Ross Barnett?

Q. No, a resentment to the entry of Meredith?

A. Yes, sir.

Q. And the students—I will confine it to you. You felt that Governor Ross Barnett was right, did you not?

A. Yes, sir.

Q. You felt that the United States District Court or the United States Court of Appeals was wrong, did you not?

A. Well, not necessarily, sir.

Q. All right.

A. I felt that they were wrong in this case.

Q. All right.

A. Because of James Meredith's Air Force record. The doctors had testified he was in a nervous state of condition. And I felt that Mississippi had a right, and—as a state, on behalf of the people, to take their case before the Supreme Court, before a full tribunal.

Q. You did know, however, that a final judgment had been entered by the Fifth Circuit ordering Meredith admitted, did you not?

A. Yes, sir.

Q. You did know that Governor Ross Barnett, Lt. Governor Johnson and all of those persons acting in concert had been enjoined from interfering in any way with the entry [fol. 184] of Meredith as a student at Ole Miss, did you not?

A. Yes, sir.

Q. All right. You also knew those things on September the 30th, 1962, did you not?

A. Yes, sir.

Q. Now I believe you have testified that you are a pre-law student?

A. Yes, sir.

Q. Did you enter the University of Mississippi for the purpose of becoming a lawyer?

A. Yes, sir.

Q. You knew at that time that the Court's Decrees, edicts and injunctions had to be obeyed until overruled, did you not?

A. Yes, sir.

Q. Are you still of that same opinion?

A. Yes, sir, I am.

Q. All right. Now the reason I alluded to your youth—I say this in all fairness. That's something that we have all had, some of us have passed on beyond past that but something we cherish deeply.

Eighteen, nineteen-year-old youth is capable of perception and remembering what things have happened, is he not?

A. Yes, sir, he could be.

[fol. 185] Q. You consider yourself one of those, do you not?

A. Well, I remember certain things—I mean—

Q. All right. I believe you testified that you arrived on the campus somewhere around 4:30 in the afternoon of Sunday, September 30th?

A. 4:00 o'clock.

Q. 4:00 o'clock. And at that time was there any activity on the campus at all?

A. By what. . . "activity"?

Q. Were there any students around the Lyceum Building or down in the circle?

A. There were a few, yes, sir.

Q. Was there anything unusual occurring at that time in the nature of any rock throwing or things of that sort?

A. No, sir, not at that time.

Q. Now did you leave the area from the time you arrived on the campus around 4:00 o'clock until after the first burst of tear gas was fired?

A. No, sir, I was there before the first burst of tear gas was fired.

Q. All right. Then you remained constantly—

A. Yes, sir.

Q. —on the campus until the tear gas was fired and for some time after that?

A. Yes, sir.

[fol. 186] Q. All right. Now do you know about what time the Marshals came on the campus?

A. I would say 5:00 or 5:30. Now I didn't have my watch at that time.

Q. I understand, and I am not holding you to times. I'm just giving you an approximation.

A. It was daylight.

Q. Still daylight. Now you knew why the Marshals were there, don't you?

A. Yes.

Q. You knew that the Marshals were there for the purpose of enforcing a court decree, did you not?

A. Yes, sir. But the court decree that I understood that they were enforcing was one that was handed down by Hugo Black over the telephone, mobilizing them.

Q. That makes a difference to you?

A. Yes, sir.

Q. As to whether or not it's written?

A. It did.

Q. And you didn't know that the Fifth Circuit Court had ordered Meredith into that University?

A. That the—the Circuit Court had—I can't think who it was—somebody had given the State of Mississippi a stay. Might have been Judge Sidney Miles, I'm not sure.

Q. Or Judge Cameron, to be exact?

[fol. 187] A. Or Cameron.

Q. And the stay had been revoked by Justice Black, is that correct?

A. Yes, it was a stalemate and Justice Black broke it.

Q. And Justice Black is on the Supreme Court of the United States, is he not?

A. Yes.

Q. And Justice Cameron is the District Court of Mississippi, I mean Justice Cameron is on the Circuit Court?

A. Circuit Court.

Q. You do realize, as a pre-law student, that the Supreme Court has a higher power than a Circuit Court, do you not?

A. Yes, sir, but one man—

Q. All right. One man or ten, it matters not.

Mr. Watts: If Your Honor please, this is an awfully unequal struggle between a lawyer of the experience of Mr. Gooch and a pre-law student.

Now within limits, I have no objections but it becomes argumentative after so long a period of time.

The Court: Is that in the form of an objection, Counsel?

Mr. Watts: Yes, sir, it's argumentative at this point.

[fol. 188] The Court: Then it's overruled.

By Mr. Gooch:

Q. Now I take it that you did not attend the football game in Jackson?

A. No, sir.

Q. You had come from your home at Karnes?

A. Yes, sir.

Q. Now when you saw the Marshals come on the campus, about where were you with respect to the Lyceum Building?

A. I was in front of the Lyceum Building, standing on the grass in the circle.

Q. Were the highway patrolmen there at that time?

A. There were a few there.

Q. More came later?

A. More came in just right after the Marshals started—

Q. Then without going into a great number of details, I believe you testified, and I would like for you to elaborate a little more, if you will, on whether or not things started being tossed at the Marshals, as you put it, or thrown, pebbles, cigarette butts, et cetera?

A. Yes, sir, pebbles and cigarette butts were tossed at the Marshals.

Q. Now there had been no gas fired prior to that time, had there?

A. No, sir.

Q. The tenor of the crowd, did you hear some cursing? [fol. 189] A. Yes, sir.

Q. And abuse—

A. As a matter of fact, our school yell has a few words in it and they were giving that.

Q. You hurled that at the Marshals?

A. Yes, sir.

Q. Did the Marshals answer back? I believe you said they remained silent?

A. Yes, sir, they did. They remained silent. People would ask them something and they wouldn't say anything. They would just look at you.

Q. Then the students, or whoever was there, started throwing a few rocks and pebbles at them?

A. A few pebbles and cigarette butts.

Q. All right. How about, anything catch afire? Did anything catch afire?

A. No, sir.

Q. You didn't see a canvas top on one of the automobile—Army trucks catch afire from a match or cigarette that was tossed into it?

A. That—I read that in a report somewhere. There was no fire at that time.

Q. All right. At least, if there was, you didn't see it, is that correct?

A. I was standing there. I would have seen it had there [fol. 190] been—

Q. While you were standing there, were you doing some of the pebble tossing?

A. No, sir, I was with a bunch that was yelling.

Q. You were yelling?

A. Yes, sir.

Q. And you say your school yell has a few words that amount to taunts, is that right?

A. Yes, sir.

Q. All right. Some of the language, though, was beyond the taunting stage, was it not?

A. Well, that depends upon the person, I guess.

Q. Very well. Now would you attempt to estimate the time—I know you didn't have a watch—attempt to estimate the time or about the time that the first tear gas was fired?

A. Oh, it was about—it was close to about 40 minutes after the Marshals had ringed the Lyceum Building.

Q. Was it still daylight or was it dark?

A. It was just—just a little daylight left.

Q. Just a little daylight left?

A. Yes, sir.

Q. And were you hit by the tear gas?

A. No, sir, I wasn't hit by it. I got some of it, though.

[fol. 191] Q. You hadn't thrown anything up to that time?

A. Not up to that time, no, sir.

Q. But after that time, you decided to really join in the riot, didn't you?

A. After the second volley.

Q. After the second volley?

A. Yes, sir.

Q. That's when you made up your mind to do what you could do, is that right?

A. That's right.

Q. And you set about to direct whatever havoc you could towards the Marshals, didn't you, Mr. Sweat?

A. No, sir, I didn't direct any havoc.

Q. Did you throw anything at the Marshals?

A. Yes, sir.

Q. Well, that wouldn't be havoc?

A. Well, it was havoc but I wasn't directing any.

Q. You weren't throwing at the Marshals?

A. Yes, sir.

Q. All right. A choice of words. Now do you know about how long things were thrown at the Marshals that night?

A. All night long, sir. Even up through dawn, even at the Army when they came in.

[fol. 192] Q. Was that throwing at the Marshals almost continuously and constant throughout the night from the time of the second salvo of tear gas was fired?

A. Well, looking at the night as a whole, it was continuous and constant, because there was always somebody running out there throwing something.

Q. Now, you did participate in some of this—would you call this a mob?

A. Well, not really.

Q. Would you call it a riot?

A. I would call it a riot.

Q. All right, was it obvious a riot was occurring there in front of the Lyceum Building?

A. Sure, a riot was occurring.

Q. Now, let's go a step further in your dissertation, and come down to the question of your moving away from the Lyceum Building, and get down to the time you were in the party, or I believe you said you were in the party that beat up a chemistry professor.

A. I was down there at the time. I was still standing behind the Confederate statue because they beat him up east of the Confederate statue, on the east—East Avenue.

Q. I must have misunderstood you. I understood you to say, "We . . . "?

[fol. 193] A. Well, "We". I consider myself part of the student body. But I didn't beat him up.

Q. You didn't participate in that?

A. No, I didn't.

Q. But some of your group did?

A. Yes, sir. Not my group. I mean the students did.

Q. Was anybody else beaten up?

A. Yes, sir, there were reporters beat up that night, people with cameras.

Q. Did you witness the beating up of a reporter and see his camera smashed and his car kicked around a good deal?

A. Yes, sir.

Q. That was before General Walker arrived on the campus, wasn't it?

A. Yes, sir, that was still in the evening. The reporter was from Texas, driving a station wagon?

Q. I believe from the Dallas News, if I am not mistaken.

A. Yes.

Q. You say that was in the evening?

A. Yes, sir, that was still—that was still in the evening, kind of. That was before the volley of tear gas was fired. The reason the students beat this reporter up—

[fol. 194] Q. Never mind about the reason. If you will stick to the facts, please, sir, I think we will get along a little bit better.

Now, you said on direct examination, and correct me if I am wrong, that when you first saw General Walker was just after this chemistry professor had been beat up, and escorted down the University Avenue?

A. Not just after. I explained there was a crowd. That is why there was a lot of people down there. They had witnessed the beating, and some of them were still hanging around.

Q. Now, give me again, if you will, please, the place on the campus, or near the campus, where you first saw General Walker?

A. It was right here (indicating).

Q. You are pointing to a place a little bit east and south of the Confederate monument?

A. Yes, sir.

Q. Describe General Walker's movements from the time you saw him until I ask you another question.

A. Yes, sir. Well, like I said, I saw General Walker here,

coming up, and people were introducing themselves. General Walker walked toward the YMCA Building and stopped and came back in here (indicating chart), walked [fol. 195] over here, not quite halfway. He came back again in this area, still moving around.

Q. Let's dwell on that a moment, if you will, please. You may resume your seat. When General Walker arrived on the campus, I believe you stated that quite a number of the students rushed up to him and started saying various things, "Here is General Walker, we have a leader, where are the volunteers," and things of that sort?

A. Yes, sir.

Q. Was it obvious to you, with your perception, that you and the crowd was rather glad to see General Walker?

A. Yes, sir.

Mr. Watts: Excuse me, if Your Honor please. If we want to throw this open, what this man thinks the crowd was thinking, that is fine with me, but I want it understood that if he goes into it I will.

The Court: Are you objecting to it?

Mr. Watts: I just want it understood that I will go into it.

The Court: No, we are not going to do that. Are you objecting to it?

Mr. Watts: I don't care. It is all right with me. I want to bring out the whole facts. We can bring out anything.

[fol. 196] Mr. Gooch: If the Court has ruled, may I have the answer to the question?

A. Will you repeat that question?

Mr. Gooch: Read it back to him, Mr. Nuss.

(Question read.)

By Mr. Gooch:

Q. I will reframe that question. Were you glad to see General Walker?

A. Yes, sir, I was glad to see General Walker.

Q. Had you heard about General Walker before?

A. I had heard about General Walker before.

Q. Did you make any outcry to the General as he came on the campus?

A. No, I didn't.

Q. But you did hear it said, "Here is General Walker?"

A. "Here is General Walker."

Q. "Here is our leader?"

A. That's right—wait, take that back.

Q. Did you hear it said?

A. Yes, sir, they said, "We have got a leader now."

Q. Then was a question asked General Walker among that group as to where his volunteers were?

A. Yes, sir.

Q. What did he say?

[fol. 197] A. He didn't say anything.

Q. Had you heard by news releases and otherwise that General Walker was coming with ten thousand strong?

A. Well, I heard that for weeks.

Q. You mean before?

A. Yes, sir, I heard the Alabama National Guard was on the way, the Louisiana Highway Patrol was coming up—we heard things.

Q. I will ask you to talk about General Walker rather than wandering off to Louisiana and other places. You had heard General Walker had said he was coming with a group of volunteers?

A. Yes.

Q. All right, and he was asked where they were?

A. Yes, sir.

Q. And he made no statement?

A. He made no statement.

Q. Did you shake hands with him at that point when you first saw him a little bit south and east of the Confederate statue?

A. No, I didn't shake hands with him until he stepped off the statue after his speech.

Q. All right. Now, at the time you first saw him was there a group of students around?

A. At the time I first saw him? Yes, sir.

[fol. 198] Q. And that was part of the group that had gone down and escorted the chemistry professor who had been beaten up, off the campus?

A. Some.

Q. Some of them?

A. Some of them.

Q. How many people would you estimate were down there around the Confederate monument and there where University Avenue comes on the campus, at the time you first saw General Walker?

A. Just in that area I would say seventy-five.

Q. All right. Now, how many would you put on the campus in the circle at the time General Walker came on the campus?

A. On the campus in the Circle? People? I would say one thousand now. Now, that is including around the YMCA Building, and just a little behind it. Those were people standing around, now. Not all were participating in the riot.

Q. You said something on direct examination you thought there might have been three or four thousand?

A. I said that evening.

Q. That evening?

A. That evening when the people first arrived. We had people from Oxford that come in to see what was coming [fol. 199] off.

Q. At the time General Walker got there, how many people would you estimate were on the campus? One thousand, two thousand, five hundred, two hundred and seventy-five?

A. On the campus itself?

Q. Yes, sir.

A. On the campus itself, on the entire campus itself, not including people in the dormitories?

Q. I understand.

A. I would say two thousand. This is including everything from the Alumna House on down University Avenue, on up to the Lyceum Building.

Q. Let's confine ourselves to the area in the north bounded by Peabody and the Y, on the east by the Confederate monument, on the south by, I believe you said, the Engineering Building, and on the west by the Lyceum, including the roadways and the circle. How many people would you estimate was on the campus, or in that area at the time General Walker arrived?

A. Around six hundred.

Q. All right. Now, when this group, you among them, went by General Walker, and when he was south and a wee bit east of the Confederate monument, how many people gathered around General Walker there?

[fol. 200] A. There were about fifty people gathered around him there.

Q. As he started toward the YMCA what did those people do?

A. Well, they followed him.

Q. As he cut back from the YMCA? And westward toward the flagpole what did that group of people do?

A. He didn't cut back that way.

Q. All right, he came back?

A. Down University Avenue Street.

Q. He came back down University Avenue?

A. Yes, sir.

Q. Then is when he walked west to the flagpole, or Lyceum Building?

A. There was a pause there.

Q. I will say after the pause.

A. People were still shaking his hand.

Q. Were they following him as he went west toward the flagpole?

A. A few did. A few went back to Hume Hall to get more bricks..

Q. Now, that brings up a very interesting subject. As a portion of these students followed General Walker west toward the Lyceum Building, the rest of them went over to Hume Hall to get more bricks, or some of them; is that [fol. 201] right?

A. Well, a few of them that had already returned from previous charges. Some of them didn't even know General Walker was on the campus.

Q. You say they went to Hume Hall to get more bricks?

A. Yes, sir.

Q. How did they transfer those bricks from Hume Hall? Carry them in their hands, a wheelbarrow?

A. Just anyway you could. If you had a box to fill them up, that was all right.

Q. When you brought those bricks on into the Circle area, what did you do with them?

A. Into the Circle area?

Q. Yes, sir.

A. Well, we would generally wait for the Marshals to charge.

Q. Then what?

A. Then we would charge back. The thing to do was catch them right after they had shot their tear gas guns so they couldn't let a salvo go in your face, you know, directly at you.

Q. Then what did you do with the bricks and stones you had gotten from the Hume Building?

A. Well, we would throw at them.

[fol. 202] Q. At the Marshals?

A. Yes, sir.

Q. And you were in that group?

A. I was. Not at that time. Now, earlier that night I had been. But by that time I had been nicked in the thumb and my arm was stiff.

Q. Were you nicked in the thumb before you saw General Walker?

A. Yes.

Q. After?

A. Yes.

Q. About how long before?

A. It wasn't too long before I saw General Walker, because a boy had just brought me back.

Q. From the Infirmary?

A. Yes.

Q. Well, now, before you went to the Infirmary had there been charges and hurling of brick and stone at Marshals?

A. Yes, sir, bigger charges at that time.

Q. When you came back from the Infirmary what did you find?

A. I found the things had changed, that the people were not charging in the old type Confederate line, like they used to, because it was too costly; that they had split up into [fol. 203] groups of five, seven, or twenty, and just coming out from anywhere they could.

Q. Toward the Marshals?

A. Yes, sir. But to attack the Marshals you had to get past the flagpole, you had to go through the tear gas smoke, and you had to hold your breath and run at the same time.

Q. Do you know about how far it is from the Confederate monument to the flagpole?

A. Oh, I guess it is about two hundred and fifty yards.

Q. Two hundred and fifty yards? Step down there and look at the scale on that map.

A. I am not sure. Being around the campus you never really pay any attention to distance.

Q. I realized that and that is why I asked you to check the scale on the map.

A. Two hundred and fifty feet.

Q. That is just one third of two hundred and fifty yards, isn't it?

A. Yes, sir, that's right.

Q. Now, how far is it from the flagpole up to the Marshals?

A. That is a little further.

Q. From the flagpole up to the Marshals?

[fol. 204] A. Oh, I thought you were talking about from the Confederate statue.

Q. No, no, no. Talking about from the flagpole up to the Marshals.

A. The Marshals were directly in front of the Lyceum Building on the steps. They still stayed back in the line.

The Court: The question, Mr. Sweat, is how far is it?

A. How far is it?

The Court: Yes, sir.

A. It is still two hundred and fifty feet.

By Mr. Gooch:

Q. Two hundred and fifty feet from the flagpole?

A. I am going by the scale on the map.

Q. That is what I am going by. Two hundred and fifty feet from the flagpole up to the Lyceum Building? Take this pencil, if you will, please, and project it. That is the back of the Lyceum Building where you are putting the pencil.

A. No, sir, this is the front.

Q. That's right. Put your pencil point here. You had it past what you were talking about. You did overguess considerably.

A. Yes, sir.

[fol. 205] Q. It is not much more than one hundred feet from the flagpole up to the Lyceum Building?

Mr. Watts: Now, if Your Honor please, I object to that as argumentative. If he overguessed Mr. Gooch is under-guessing. This is argumentative.

The Court: Mr. Sweat, are you able to calculate the distance?

The Witness: No, sir.

The Court: You are not able to use that scale and calculate it?

The Witness: I could tell if you would give me a ruler.

The Court: Do the best you can with the pencil and tell the Jury what you find.

Mr. Watts: As I understand, the question is from the flagpole to the Lyceum Building?

The Court: That is right.

Mr. Watts: Yes, sir.

The Witness: Hundred and twenty-five feet is what I come up with.

By Mr. Gooch:

Q. And the Marshals were out in front of the Lyceum Building?

A. Yes, sir.

Q. So, the Marshals would have been some closer?

A. Yes, sir.

[fol. 206] Q. To the flagpole than the Lyceum Building?

A. Yes, sir, but you still had to go past that flagpole to get to the Marshals. You couldn't throw it.

Q. That depends on the throwing arm of the individual, doesn't it?

A. No, sir, the trees and limbs actually prevented you from tossing bricks or bottles. You couldn't see.

Q. All right. Now, at the time General Walker arrived on that campus and you saw him let's look at it through your eyes, Mr. Sweat. Were the Marshals being thrown at?

A. Prior to the time General Walker arrived?

Q. At the time.

A. Yes, sir.

Q. At the time he arrived on that campus were the boys bringing up bricks and stones from Hume Hall?

A. They had been doing that all night long.

Q. Was that obvious to you as you stood near General Walker?

A. Well, I didn't pay any attention to that. That had been going on all night.

Q. It was continuous?

A. It was continuous.

Q. It was perfectly obvious to you that it was going on?
[fol. 207] A. Yes, sir, but after I saw it I didn't pay much attention to it, an—after that.

Q. Was it obvious to you there was tear gas in the air? Up somewhere around the flagpole and the Lyceum Building?

A. Yes, sir.

Q. And further back into the Circle?

A. Yes, sir.

Q. Was that easily discernible?

A. Sir?

Q. Was that easily discernible, just by looking?

A. Yes, sir, you could see it.

Q. Were there boys or groups going in and throwing missiles at the Marshals at the time General Walker walked on that campus?

A. Yes, sir.

Q. Was that obvious to you from where you stood down near the monument?

A. Yes, sir.

Q. And it was obvious to anybody that looked around, that there were bricks being carried on the campus, on the circle, that they were being broken up into half bats, that the boys were gathering up those missiles and bricks and stones and coke bottles, whatever they could find, and going toward the Marshals and throwing those missiles at the [fol. 208] Marshals? That was obvious, wasn't it?

A. Yes, sir.

[fol. 209] Q. It was obvious at the time General Walker walked on that campus, wasn't it?

A. Yes, sir.

Q. Now the General, as he walked, after he had gone over towards the YMCA, and according to you had come back down to the Confederate monument, he walked some distance, which you estimate as half-way?

A. Yes, sir, not quite half-way.

Q. Not quite half-way?

A. No, sir.

Q. Trying to be accurate on your testimony. Walked about half-way from the Confederate monument up towards the flagpole?

A. Up towards the flagpole, yes, sir.

Q. And you say he was followed by a group of these students?

A. A group.

Q. Did those students have anything in their hands?

A. No, sir.

Q. They all had dropped them just before they started up there?

A. Yes, sir, most of them dropped them so they could shake hands with him.

Q. I see. Did he—did they pick them up?

A. If they didn't, someone else did. I couldn't speak for [fol. 210] the people that dropped the bricks.

Q. Some of them dropped them and some of the rest picked them up?

A. They were more interested in talking with General Walker.

Q. I understand. But they did walk towards the Marshals?

A. Yes, sir, they walked up towards the Marshals—but not half-way.

Q. All right. Now this leadership you were talking about, you have mentioned in answer to a question by Mr. Watts that you were a part of a group of about 15 leaders that conferred with General Walker?

A. Well, we were—

Mr. Address: Just a moment, we are going to object to the form of the question. He did not testify there were 15 "leaders". He testified there were about 15 people.

The Court: If he didn't, he can say so. Overruled.

The Witness: That's right, they weren't leaders. That's the account that Mr. Watts read to me and I said that might be what whoever wrote that was talking about.

By Mr. Gooch:

Q. Mr. Watts asked you, read you an excerpt from an article in which it said that General Walker conferred with about 15 people who appeared to be the riot leaders and [fol. 211] your answer was, "That was part of the group I was in."?

A. I think—I think that's the one he's talking about.

Q. All right. How long did that conference take place?

A. Not too long.

Q. And when did it take place?

A. It took place while they were standing there. They stopped—

Q. While who was standing there?

A. While General Walker and a few of the boys were standing there.

Q. Was that when he first came on the campus?

A. No, sir. Now I am talking about right after the speech he made.

Q. We haven't gotten down to the speech yet.

A. Well, no, this—then this isn't the thing we are talking about then, the 15 people.

Q. Well, the 15 people you say was after the speech?

A. Yes, sir.

Q. Could you be mistaken on that?

A. No, sir.

Q. As a matter of fact, didn't General Walker, the minute he finished his speech and without hesitancy come down [fol. 212] off the monument and walk towards the Marshals and toward the Lyceum Building with a group of people following him?

A. No, sir. When General Walker stepped off the statue, he stepped to the right and walked just a little past the statue and that's when we talked with him.

Q. And he didn't walk on up then towards the Marshals?

A. No, sir.

Q. At no time?

A. Not then.

Q. Then did he later?

A. He did, now, before that. Like I told you, when he came back from the "Y", he started up that way, but he stopped half-way and he stood and looked and then he came back.

Q. Did General Walker after that first advent, when he walked toward the flagpole with this group you described, before the speech, did you ever see General Walker walk at the head of a group any more west toward the Marshals?

A. Walk at the head of a group?

Q. Yes, sir.

A. He could have now but I didn't see it.

Q. You didn't see it?

A. No, sir.

Q. And when General Walker stepped down off the [fol. 213] monument, you say that he stopped there and conferred at length?

A. Yes, sir, we talked with him.

Q. How long would you say he conferred?

A. Long enough for me to smoke a cigarette and have it put out and still stand there and talk with him.

Q. Now that was after the speech?

A. After the speech.

Q. Now you are positive about that?

A. I am positive about that.

Q. All right. Now let's get down to the speech that General Walker made on the monument. Would you detail again for the benefit of myself, as well as the Court and jury, what you heard General Walker say.

A. Well, I heard General Walker say something to the effect that, said, "You have a right to protest. It's guaranteed to you in the Constitution."

Said, "This is not the right way. It's the long way around but," said, "You have a right to protest."

And he said something about Cuba being that way (indicating).

Q. Do you remember him making a statement as follows: "This is wrong but you have a right to protest"?

A. He said that. Yeah, he said something like that.

Q. That was after he had come on the campus and had [fol. 214] seen all of these bricks and bottles and stones and sticks being hurled at the Marshals?

A. Yes, sir.

Q. Wasn't it?

A. Yes, I guess he was—he saw that.

Mr. Watts: If Your Honor please, I still object to him asking this witness what Walker saw.

The Court: Sustained.

Mr. Address: We request that the jury be instructed not to consider it.

The Court: The jury is instructed not to consider the last question and answer.

Mr. Gooch: Well, now I don't want to transgress on the Court's ruling but I do want to ask him one more question and I'd better say it to the Court.

The Court: You asked him a while ago, Mr. Gooch, what he saw and what was taking place out there at the time that the General came up there.

Mr. Gooch: I can't ask him about what Walker said?

The Court: Oh, yes.

Mr. Watts: Oh, I have no objection to that.

The Court: Yes.

Mr. Watts: I just don't want him to ask him what Walker saw.

The Court: That question related to what he saw and [fol. 215] not what Walker said.

Mr. Gooch: Let's go back to cure that objection, then.

By Mr. Gooch:

Q. I asked you and you answered as to what General Walker may have seen. I want that question stricken because I want just strictly what you know.

At the time that General Walker came on the campus, the very time he came on the campus, before he made a

speech, tell us whether or not there were sticks and stones and bottles hurled at the Marshals?

Mr. Watts: If Your Honor please, I object to that as repetition. The witness has testified that at least four times from Mr. Gooch's testimony (sic), that when Walker came on the campus, there were being sticks, stones and missiles—

The Court: Sustained.

By Mr. Gooch:

Q. Did you hear General Walker say these words: "Keep up the protest."?

Mr. Watts: Just a minute, if Your Honor please. I object to that unless he fixes where and when.

Mr. Gooch: On the monument.

Mr. Watts: Now I have no objection to it.

A. No, sir, I honestly didn't hear that.

By Mr. Gooch:

Q. We will get to that in just a minute. I will ask you if this happened: Walker, right after that—and I'm talking [fol. 216] about the speech—stepped down off the statue, a crowd of people still around, Walker walked up due west towards the flagpole?

A. He walked a few steps due west past the Confederate monument, going toward the flagpole but not far enough to really make any difference.

Q. All right. Just a moment. Let me ask you this question:—

Mr. Watts: Might I fix what place you are reading from the deposition, please? The pages are numbered.

Mr. Gooch: Well, I will just put that in now.

Look on Pages 16, of Mr. Sweat's deposition.

Mr. Watts: All right.

By Mr. Gooch:

Q. Mr. Sweat, do you recall your deposition having been taken over in Oxford, Mississippi, sometime in March of 1964?

A. Yes, sir.

Q. March 13th, to be exact. Now, if you will, please look on Page 16, the question was asked:

"Who came down here to a meeting?" And the answer?

A. Walker said—you want me to read it?

Q. Yes.

A. Walker said something about a meeting here in Oxford courthouse that Birdsong had withdrawn the highway patrol and I didn't get all of this speech because someone [fol. 217] near me started talking to me and I didn't hear that clearly.

Walker right after that stopped—stepped down off the statue, a crowd of people still around—these are the 15 boys I was talking about.

Mr. Gooch: Please read your testimony, please, sir.

A. Well, Walker walked up due west towards the flagpole. Well, he did, he walked a few steps up.

Q. All right. Could you give us the benefit of your very best estimate, not in the whole area but in the crowd that immediately surrounded Walker.

A. Right after the speech?

Q. Yes, sir.

A. Right after the speech, Walker lost the crowd.

Q. Read your answer.

A. Fifty people. There were 50 people around the statue.

Q. Go ahead and read the rest.

A. Fifty people. General Walker was a curiosity. He was a well noted person. People were there to see what he looked like. Many had never seen him before.

Q. Next question: Did anyone say anything about leading them before he started up the grove?

Mr. Andress: Before he started west.

By Mr. Gooch:

Q. Did anyone say anything to him about leading them before he started west? Excuse me.

[fol. 218] Mr. Address: All right.

A. Yes. While Walker was going up to the grove he stopped before he got to the flagpole. He looked it over. People said, "Walker, what could we do?"

Now this was before the speech.

By Mr. Gooch:

Q. Now, let's see if it was.

A. Now this is the way I understood the question—before the speech.

Q. Well, that doesn't say that, does it?

A. It doesn't say when it was, really.

Q. All right. Now let's don't quibble, please, sir, because here is what you have talked about.

A voice somewhere to the left said, "I'll tell you, you sold us out. It was Col. Birdsong."

Now was that on the monument or was that before he got on the monument?

A. That was while Walker was on the monument.

Q. All right.

A. People were screaming, Ross Barnett had sold them out.

Q. People said, "Was it Col. Birdsong, General Walker? Was it Col. Birdsong?"

Mr. Watts: May I inquire where you are reading?

Mr. Gooch: Page 16, the same page. I have been on it for the last five minutes.

[fol. 219] Mr. Watts: You are skipping around. I can't keep up with you.

Mr. Address: Going backwards.

The Court: Just a minute. I don't want any of this business between counsel.

Mr. Watts: I'm sorry. I found it. It's at the top of the page.

By Mr. Gooch:

Q. General Walker said the man was Col. Birdsong. Did that happen on the monument?

A. Yes, sir.

Q. He mentioned something about coming down here to Oxford to a meeting. I'm not sure about that because—
Now was that on the monument?

A. That was interrupted. The meeting?

Q. No.

A. Oh, when he said this? He said the man was Col. Birdsong. Now this is what I said, said he mentioned something about coming . . . meeting. Now this was in talking with him, there was something mentioned about a meeting in Oxford. Now I didn't get all of that.

Q. Well, Mr. Sweat, if you will take that deposition and look on Page 15, you will see that the question was asked concerning the speech on the monument and then what occurred afterwards.

Is that a fair interpretation of your deposition?
[fol. 220] A. (Reading) Your Governor did not sell you out—

Q. Just go ahead and read.

A. General Walker did not say anything. He looked out over the crowd, stared down University Avenue. A voice somewhere on his left said, "I'll tell you. . . . Col. Birdsong."

Q. Was that while he was on the monument?

A. Yes, sir, he was still standing on the monument.

Q. All right. Now go ahead.

A. (Reading) People said, "Was it Col. Birdsong. General Walker, was it Col. Birdsong. General Walker said the man was Col. Birdsong."

Q. All right.

A. He mentioned something about coming down here to Oxford to a meeting.

I'm not sure about that because—now this was right after the speech, in talking with him.

Q. All right, the next question follows.

A. Walker stepped off the statue, a crowd of people still around. Walker walked up due west towards the flagpole.

Well, he did. There were a few people around Walker and he did take a few steps due west towards the flagpole.

Q. All right. Then we are talking about after his speech, aren't we?

[fol. 221] A. Right now we are, yes, sir.

Q. All right. The next question: "Could you give us the benefit of your very best estimate of the crowd, not in the whole area, but in the crowd that immediately surrounded Walker?"

A. Now I interpreted this as the crowd around the Confederate statue. And I said fifty people.

But now when Walker stepped off, he lost those 50 people.

Q. They didn't go with him?

A. No, sir, they jeered him, as a matter of fact.

Q. Did anybody—did anybody walk with General Walker toward the flagpole after he made his speech?

A. Yes, sir, I was with him.

Q. Anybody else?

A. Yes, sir, there were a few other people.

Q. How many?

A. There were close to around 15, I would say.

Q. Did you have anything in your hands?

A. No, sir, I didn't have anything in my hands. I was wounded at that time. I couldn't carry anything.

Q. Well, the rest of them were not wounded, were they?

A. No, sir, but they didn't have anything.

Q. They didn't have anything. Now on the speech on the monument, I will give you the page on that in just a [fol. 222] moment.

Page 14, I have asked you the question if Walker, while he was on the monument, didn't say—

Mr. Watts: Page, please?

Mr. Gooch: Page 14, Mr. Watts.

By Mr. Gooch:

Q. "This is wrong but you have a right to protest." You said he made that statement?

A. Yes, sir.

Q. (Reading) He also said, "It is a long way around."?

A. It's a long way around, yes, sir, what we were doing.

Q. Then he said—and I asked you and you say you don't remember. —"keep up the protest." Look at your answer on Page 14, of the deposition, at the top of the page, please, sir.

A. (Reading) You have a right to protest. . . . long way around, he said, keep up the protest.

Well, I might have forgotten that.

Q. Well, now at the time your deposition was taken, that's the statement you made, was it not?

A. Yes, if it's in my deposition—

Mr. Watts: Object to that question unless he reads the entire statement. He just read an excerpt.

The Court: He's asking him if he answered it that way. [fol. 223] The Witness: But here is what else I said. Now by what he implies—

The Court: Just a minute. He hasn't asked you what else you said. He said, "Did you make that statement and at the—at the time of the deposition."

The Witness: Yes, sir, but this is in support of my statement.

Mr. Watts: That's all right.

The Court: That's the answer he's asking you now.

By Mr. Gooch:

Q. I'm asking if Walker said—did you hear him say, "Keep up the protest"?

A. If it's on the deposition, then I said it.

Q. All right. Did you know or see a minister by the name of Duncan Gray that night?

A. Yes, sir.

Q. Did you hear General Walker make any remark to

Duncan Gray to the effect that he, Walker, was ashamed he was an Episcopalian?

A. Yes.

Q. Did you hear the Reverend Duncan Gray ask or implore General Walker to stop the violence on the campus?

A. I didn't hear Duncan Gray ask that.

Q. Did you hear the conversation between Duncan Gray and General Walker?

A. No, sir. All I heard was Duncan Gray trying to get [fol. 224] up on the statue with General Walker.

Q. You didn't see Duncan Gray before that time?

A. Yes, sir, I saw him before that time now.

Q. Did you ever hear Duncan Gray ask General Walker to stop it?

A. No, sir, I didn't hear him say that.

Q. Did you ever hear General Walker say to Duncan Gray, "I wouldn't stop it if I could."?

A. No, sir, I didn't hear that.

[fol. 225] Q. Did you hear anything that Duncan Gray, any exchange between Duncan Gray and General Walker, except the statement made by General Walker that he was ashamed he was an Episcopalian?

A. I heard that now.

Q. After you heard General Walker say that he was ashamed he was an Episcopalian what happened to the minister?

A. The minister tried to get up on the statue and someone pulled him down. Now, if they hadn't pulled him down the crowd—

Mr. Watts: Just a minute.

The Court: He asked what he did.

The Witness: Well, he tried to get up on the statue and he was pulled down.

By Mr. Gooch:

Q. All right. Just a moment here, Your Honor.

The Court: All right.

By Mr. Gooch:

Q. Do you know what happened to Rev. Duncan Gray when he tried to get up on the monument where General Walker was speaking?

A. Yes, sir, he was pulled down.

Q. By whom?

A. By students at first.

Q. Then by whom?

[fol. 226] A. I don't know. I heard—

Mr. Watts: Don't say what you heard.

The Court: If you don't know, you can't say.

A. I just know he was pulled down by someone in the crowd.

By Mr. Gooch:

Q. All right, just a moment. If you will, here, please, at the time these missiles—I forgot to ask you this: I believe you alluded to it and I want to be sure. I believe you said they broke up the benches?

A. Yes, sir, most of the concrete benches in the Grove were broken up.

Q. When did this occur?

A. This occurred in the early part when it first started.

Q. You got rid of all that ammunition?

A. Yes, sir, people had been—I take that back.

Q. Have you been apprised of a statement made by General Walker before he got to Mississippi to the effect, "Bring your flags, your tents and your skillets"?

A. Yes, sir, I heard that statement, but I didn't put much faith in it.

Mr. Watts: Now, just a minute.

By Mr. Gooch:

Q. Some people did try to find out where these volunteers were coming from, didn't they?

[fol. 227] A. Yes, sir.

Mr. Watts: Now—well.

By Mr. Gooch:

Q. At the time you saw General Walker did any of the crowd that was around General Walker, and you testified there was a crowd around General Walker—have any missiles, sticks or stones?

A. Now, this is after the speech?

Q. No, before the speech, prior to the time he went toward the flagpole first.

A. I couldn't be sure about that. Probably some of them did, but it was a common thing.

Q. Please refer to page 38 of this witness' deposition, please, sir. It doesn't say what line it is, but it is the next to last question: "At the time this crowd was around him when you first saw him east of the monument did some of the crowd, at least, have in their possession brickbats, stones and sticks?" And your answer?

A. The boys from Hume Hall—

Q. Well, I believe you prefaced that by "Yes, sir."

A. Yes, sir, but they were—

The Court: He asked you if you said that.

The Witness: I said that.

By Mr. Gooch:

Q. You said, "Yes, sir, the boys from Hume Hall did particularly," did you not?

A. Yes, sir.

[fol. 228] Q. And to further accentuate, may I refer you to page 39 of the deposition, the third question up from the bottom of the page. The question: "At the time you first saw him in the crowd that was around him there was some of these surroundeers, we will call them, in possession of bricks, stones, sticks and missiles, is that correct?" And your answer?

A. "Yes, sir."

Q. Now, that was when he first came on the campus the first time you saw him?

A. Yes, sir, but that was a common thing for the people to have those things then, because we were still fighting on.

Q. You fought all night, didn't you?

A. Yes, sir.

Q. Now, you stated on direct examination that the first contact you had with Walker personally was after he finished his speech on the monument, I believe?

A. Yes, sir, that was my first personal contact.

Q. All right. Now, tell us again what Walker did when he got off the monument?

A. He stepped off to his immediate right. I was immediately below him. He brushed past me and I fell in right beside him.

Q. And went where?

[fol. 229] A. We walked just a few steps toward the flagpole and stopped, and we chatted around, started talking to him.

Q. And that few steps west would be toward the Lyceum Building and the Marshals?

A. Yes, sir.

Q. May I ask you a question as to your deposition on page 45, the question at the top, "Then Walker, according to your testimony, did not leave the vicinity of the monument for thirty minutes after he finished his speech?" Your answer?

A. "Well, now, I am talking about the time I talked to him when he stepped down off the statue. He did go toward the Lyceum because the smoke had cleared out and this is when we pointed out to him, this is the Lyceum, and that is where I talked with him."

Q. Then prior to the time you had the talk with him in which you bummed a cigarette, as you testified to, Walker did walk with a group?

A. Yes, sir, I was—

Q. Wait just a minute. Toward the Lyceum Building and the Marshals?

A. Yes, sir, but not far enough.

Q. I am not talking about far enough. Did he go toward the Marshals and the Lyceum Building after he finished his [fol. 230] speech?

A. Yes, sir, if he was traveling west he had to go toward the Lyceum Building.

Q. Well, now, will you answer the question?

A. Yes, sir, when he stepped off he automatically was facing the Lyceum Building anyway he stepped. He had to be going toward the Lyceum and the Marshals.

Q. How far did he walk?

A. I would say he didn't get no further than twenty steps.

Q. Twenty steps from the Confederate statue?

A. And those are short steps.

Q. Anybody following him?

A. We were around him. There were still people rioting that didn't even know General Walker was there.

Q. Did any of those boys that walked up with Walker and you, as he walked toward the Marshals or Lyceum Building, have anything in their hands? I believe you said no, did you not?

Mr. Watts: If the Court please—

The Court: Sustained. It is repetition.

By Mr. Gooch:

Q. Then may I ask him a question?

Mr. Watts: Sure.

The Court: Relating to the deposition?

Mr. Gooch: Yes, sir.

[fol. 231] The Court: Yes, sir.

By Mr. Gooch:

Q. On page 45, the bottom question, "Now, tell us, as the group walked there with Walker up near the flagpole did they have in their hands the brick and the stones and missiles that they had been throwing?" Your answer, please, in your deposition?

A. "Some of the boys did."

Q. Read the rest of it.

A. "Particularly that come from Hume Hall because they were the ones that were giving them out down there."

Q. Then, according to your testimony at the time your deposition was taken, the group that went with Walker toward the flagpole, some of them had missiles in their hands?

A. Everybody had something in their hand that night, or during the night.

Q. I am talking about at this particular time.

A. Yes, sir, but you can't be too sure about that, though, sir. Because you are so used to seeing that all night you really don't pay any attention to that. And I gave that on the assumption that most of the people did have something in their hands that night there, and I recall seeing one boy nearly—near Walker with a brick in his hand, but now he got mad and left.

Q. On page 47, the question number 1, 2, 3, from the [fol. 232] bottom, "But Walker did, though, immediately after he finished his speech, go with the group up toward or near the flagpole?" Your answer, please?

A. "Up near the flagpole, and he stopped."

Q. That was what you said when your deposition was taken?

A. Yes, sir.

Q. Is that still the truth?

A. Yes, sir, but he didn't get up to the flagpole.

Q. You said a while ago—I am trying to get your definition of near.

A. Near?

Q. You said he went about twenty steps and that they were short steps.

A. Yes, sir.

Q. Twenty steps from the monument towards the flagpole, if they were short steps, would not be more than about fifty feet, would it, or sixty at the outside?

A. I couldn't say that.

Q. But you know you stepped not quite a yard?

A. We didn't get far past that Confederate statue, because I remember leaning up against a tree down there near it.

Q. You said—a—because—

A. Because—

[fol. 233] Q. Just a minute. You said in your deposition you got near the flagpole?

A. Yes, sir, but not that near to it, like you are pointing.

Q. I was pointing out the flagpole. I am trying to get your definition of near.

A. I consider the wall at the back of the room near.

Q. All right. The last question on page 47, "Question: How long did General Walker remain with the crowd that had gone up there to the flagpole with him at that time?"

A. "He stayed there approximately two minutes."

Q. Is that the answer?

A. Yes, sir. Then we took—

The Court: Wait just a minute. He didn't ask you that. He asked you if you made that answer?

The Witness: Yes, sir.

The Court: Don't volunteer information.

The Witness: I am sorry.

By Mr. Gooch:

Q. Did you ever see a man with a Deputy Sheriff's badge on that weighed around 250 or 275, height approximately 5 feet 11?

A. I saw a lot of Deputy Sheriffs that night but I can't be sure that is the particular one or not.

[fol. 234] Q. Did you see one in the vicinity of Walker most all evening?

A. No, sir.

Q. Do you recall an incident of a fire truck coming on the campus?

A. Yes, sir, I recall that.

Q. Was that after General Walker's speech, or before?

A. I am thinking that that was after General Walker's speech.

Q. Did you—

A. The question—

Q. —excuse me.

A. Go ahead, I am sorry.

Q. Did you go up and inspect the fire truck?

A. Not when the fire truck first got there, no, sir.

Q. Did you go up near where the fire truck was maneuvering?

A. Yes, sir, I was up near where the fire truck was maneuvering.

Q. Did you see General Walker there?

A. No, I didn't.

Q. Where was the fire truck with relationship to the flagpole?

[fol. 235] A. At what time?

Q. At any time.

A. When the fire truck came in they brought it in here and stopped it and the firemen got out and gave it to the crowd, and the fire truck took off right here and stopped and the boys got on it, the West Virginia boys and a few others and they started around, and they brought it around and swept past the Marshals in the tear gas and smoke and let them have it, and then they cut back down through here (indicating) and stopped somewhere in here, out in here.

Q. By "out in here" you are pointing now—

A. It is about north to northeast.

Q. North to northeast of what?

A. Of the flagpole.

Q. And about—

A. I couldn't be sure on this map. If I was on the campus I could point it out exactly.

Q. I realize that, but about how far from the flagpole?

A. Well, I would say one hundred feet.

Q. Is that where the fire truck stalled?

A. No, sir. Now, the caterpillar stalled.

Q. Didn't the fire truck stall?

A. The fire truck might have stalled because they [fol. 236] stopped for a long time.

Q. That is what I am talking about. Where was it stopped?

A. Right up in here somewhere (indicating map).

Q. Was it north of this east and west line of the Circle?

A. North of the east and west line of the Circle? Yes, sir, it was right here (indicating).

Q. Over toward the YMCA?

A. The YMCA, yes, sir.

Q. All right. Did you at any time hear General Walker say anything to the effect that he complimented the crowd on what they were doing that night?

A. Would you explain that a little further?

Q. Oh? In connection with—I believe we established in your opinion, at least, a riot was going on there in the Circle?

A. Yes, sir.

Q. Did you at any time hear General Walker compliment the crowd on what they were doing?

A. Compliment the crowd?

Q. Yes, sir.

A. No, sir. I am not quite sure about what you mean on that.

Q. Well, I can't make it much plainer than that. Did [fol. 237] he state to them, "Keep it up"?

A. Well, now, in my deposition—

Q. Or—

A. —in my deposition I stated he stated keep it up. Now, of course, I don't recall saying that, but if it is in my deposition I said it.

Mr. Gooch: That is all, thank you.

Redirect examination.

By Mr. Watts:

Q. A couple of very short questions. Son, I want you to step down here, please, and re-check these distances. You testified on direct examination it was 125 feet?

A. Yes, sir.

Q. From the flagpole to the Lyceum, and I want to call to your attention the fact that this scale here starts with 100, then goes to zero, then goes to another hundred. I wish you would start here, start with the zero and measure 125 feet.

A. Fifty, seventy.

Q. Now, measure two hundred feet.

A. Two hundred feet?

[fol. 239] Q. Now put this scale up here next to the flagpole and point out to the jury where 125 feet is?

A. 125 feet is right here.

Q. Does that reach to the street, to the west of the flagpole?

A. No, sir.

Q. Now point out to the jury exactly how far it is from the flagpole to the Lyceum Building.

A. Oh, it's—

Q. Measure it first on your paper.

A. It's 200—250 or 300—

Q. Well, let's get it accurate here because you have a scale on your map.

A. It's 250, almost.

Q. All right, sir.

A. Give or take a few feet.

Q. Now you say it's 250 from where to where?

A. From the flagpole to the Lyceum.

Q. All right, sir. Now then at the time you saw General Walker enter the campus, was it possible to walk along University Boulevard to the Confederate monument as you went west?

A. No, sir.

Q. Why?

A. Because we had set up a barricade down there. I [fol. 240] helped build it. We got the material from the construction at Hume Hall and built a light barricade out of planks and barrels and whatever else could be drug up.

Q. In traveling westward from the entrance to the campus, towards the monument, what route was it necessary to take to get past those barricades?

A. You would have to go by the sidewalk.

Q. Was there a sidewalk on either side of that University Avenue?

A. On one side there is a sidewalk.

Q. Which side of University Avenue was the sidewalk?

A. The sidewalk runs down near the new Science Building and the Journalism Building; going toward the Lyceum, it's on your left.

Q. Now you were asked on cross examination by counsel to read the answer to your question, did anyone say anything to him about leading them before we started west. You read a part of it.

I will ask you to read the remainder and the entire answer that you gave.

A. Yes—

Mr. Gooch: I don't believe I asked that question.

Mr. Watts: That's the question you asked, Counsel, on Page 16.

The Court: Are you objecting to the witness answering [fol. 241] it?

Mr. Watts: Perhaps we'd better check the record.

Mr. Gooch: I'm objecting to the preface Mr. Watts made about what I interrogated him about.

The Court: I don't remember that. It's not particularly material as to whether you asked him or not.

If you now want to ask him—

Mr. Watts: Yes, sir, I want to ask him to read his entire answer, to first read—I'll read the question. Did anyone say anything to him about leading them before he started west?

Now read your answer.

The Witness: Yes, while Walker was going up to the grove, he stopped before he got to the flagpole. He looked it over. People said, "Walker, what could we do?" He didn't say anything.

And the people said, "General Walker, will you lead us?" He still didn't say anything.

People by this time were becoming mad at General Walker. They said, "At least you could give us advice." Walker said, "I don't want to obligate myself."

By Mr. Watts:

Q. And read the next—let me read the next question.

Mr. Gooch: Wait a minute. If the Court please, this is [fol. 242] his witness, not mine.

Mr. Watts: But this is his examination, if Your Honor please.

The Court: I will permit him to read it.

Mr. Watts: He asked a part of it and I think—thank you, sir.

By Mr. Watts:

Q. Now the next question, is, question, was that language clear to anyone in six or eight or ten feet so they could hear him?

Mr. Gooch: That's objectionable.

The Court: I sustain the objection.

Mr. Watts: Yeah, but I do want him to read the answer.

Mr. Gooch: Wait a minute.

The Court: Well, I won't permit him to read the answer because the question is objectionable.

Mr. Watts: Well, all right.

The Court: I will let him testify as to what he heard, not as to what anyone else could have heard.

Mr. Watts: All right, sir. Let's see, I think the next was on Page 14.

By Mr. Watts:

Q. Now on Page 14 of the deposition, you read a portion of your answer. I will read the question and ask you to read the entire answer.

Question: As best you can remember, outline to us what [fol. 243] you heard him say.

And, incidentally, to make sense out of that, I think we should read the previous sentence: I heard his speech. I was to Walker's immediate right. I was south.

Now read your entire answer, not just a part. Page 14.

A. We had trouble at first understanding what he said, even close up to him, because people were still screaming and yelling.

There was a charge going on about that time, too, and the boys were running back and a salvo of tear gas had been fired and some of it was drifting down.

Walker got up on the statue and started talking and he said something to this effect. I can't quote him exactly now word for word.

He said, we did have a right to protest. He said, "This is wrong but you have a right to protest. It is the long way around."

He said, "Keep up the protest."

Now by what he implied by that, the way I—

Mr. Watts: Just a minute. Just a minute. You can't—that's all right, you can't—that's right, I don't ask—I don't want him to say what he implied.

The Court: I don't want him to read that.

Mr. Watts: That's right.

[fol. 244] (Conference at the bench.)

By Mr. Watts:

Q. Now, son, you said you were knicked in the thumb?

A. Yes, sir.

Q. With what?

A. I think it was a buckshot but I couldn't prove it. It—

Q. Now was that before Walker arrived on the campus?

A. Yes, sir, this was.

Mr. Watts: It's 12:00 o'clock. I believe that's all, sir.

The Court: Are you through with the witness?

Mr. Watts: Yes, sir.

Mr. Gooch: That's all.

The Court: I'm going to excuse him then. All right, we will excuse you.

Ladies and Gentlemen, we will recess until 2:00 o'clock. At 2:00 o'clock, just wait in the jury room and I'll call you out.

(Thereupon, at 12:00 o'clock noon, a recess was taken until the same day at 2:00 o'clock, p.m.)

[fol. 245]

Afternoon Session

CECIL V. Cox, Jr., called as a witness by the Plaintiff, having been first duly sworn, testified as follows, to-wit:

Direct examination.

By Mr. Watts:

Q. Will you state your name, please?

A. Sonny Cox.

Q. Son, will you lean forward so the mike will fit you. Where do you live?

A. Marks, Mississippi.

Q. Spell that, will you?

A. The last or the first?

Q. The name of the town?

A. M-a-r-k-s.

Q. How old are you, son?

A. Twenty-one.

Q. Is Sonny your only name?

A. No, sir.

Q. What is your real name?

A. Cecil V. Cox, Jr.

Q. Which name do you go by?

A. Sonny.

Q. Are you a student at Ole Miss?

A. Yes.

[fol. 246] Q. Were you such a student on the 30th of September, 1962?

A. Yes, sir.

Q. Were you on campus that night?

A. Yes, sir.

Q. Do you know where an area on the campus known as the Circle is?

A. Yes.

Q. Were you there that night?

A. Yes.

Q. What was going on?

A. Mass confusion, I'll say.

Q. While you were there did you have occasion to see General Walker?

A. Yes, sir.

Q. I wish you would tell the Jury, please, in your own words from the time you saw General Walker, tell us what General Walker did, what you saw and what you heard. Now do not—I caution you at this time, do not endeavor to tell what anyone else saw, thought or heard, but tell what you saw and what you heard.

A. About nine o'clock I was rambling around about the end of University Avenue, and I saw a small crowd gathering under the Confederate statue. I walked over there and somebody was talking over there, I could see, and a group [fol. 247] of students was yelling, "Oh, go on back, you lost out in Texas, we don't need you here."

I didn't understand what it was, so I walked up closer and this General Walker was up there telling them, "We cannot accomplish anything like this, maybe if we could talk to them, or something to that effect."

Well, the crowd begin to kind of jeer him, and they were

kind of drifting off in another direction. A few stayed with him, maybe 15 or 20.

This other guy with me and I went up there and shook hands with him and he stepped down off the pedestal and we were standing there by the pedestal talking about the general advance and so forth. We talked a few minutes and moved on up toward the flagpole, you might say. We were walking along there and a few students were out in front. They had—they were using a T-shirt, a white shirt for a truce flag, going to try to talk to the Marshals. We walked along there, and a few in front and a few in behind. We got about 20 yards maybe from the street across from the building and we kind of held back and a few students went on up front, and they did begin have a little conversation up there. The Marshals asked them what they wanted. A couple of them said, "Well we want that nigger."

And something happened, I don't know what the occasion was, but the Marshals started firing again and every-[fol. 248] body retreated, and some of them came back and retaliated by throwing bricks and bottles.

And that is the last I saw of General Walker that night.

Q. Had you seen General Walker before he made his speech on the monument?

A. No, sir.

Q. After he made his speech on the monument did he lead a charge against the Marshals?

Mr. Gooch: We object to that if the Court please. It calls for an opinion and conclusion of the witness.

Mr. Watts: All right.

The Court: Sustained.

Mr. Watts: All right.

Mr. Address: If we may approach the Bench.

The Court: No.

Mr. Address: All right, note our exception. We would like to have a bill on it too.

The Court: All right.

By Mr. Watts:

Q. After this speech on the monument, have you told us everything that he did that you saw?

A. Well, that is a general question.

Q. Well, you have attempted, as I understand, to outline what you saw him to do?

A. Yes.

[fol. 249] Q. Is there anything further that he did that you haven't told us about?

A. Well, we walked up there. We were talking.

Q. Hold it right there. As you walked up what gait did he walk?

A. Just a slow rambling gait.

Q. Try to describe as nearly as you can the actions and conduct of the people immediately in his vicinity, I will say within an area of 15, 20 or 30 feet?

A. After he stepped down off the statue?

Q. That's right.

A. From—some drifted off because they were disappointed.

Q. Well now—

Mr. Gooch: —Wait—

Mr. Watts: —I will agree.

The Court: Don't tell why you think they drifted off. You may testify to the fact they drift off, if they did.

A. Well, they drifted off because—

Q. Well, no, don't say "because."

A. Well, they drifted off.

Q. You don't know what was going on in their mind.

A. Yes, sir.

Q. We don't want you to testify to anything that you [fol. 250] don't know. Now then the ones that went on towards the flagpole, or in that direction with General Walker, describe to us how they appeared, how they walked, where Walker was within the group, what was the size of the group, and everything of interest, because these people need to learn what you saw?

A. I will 25 or 30 people were in the group, some in front of some in behind General Walker. He was in the middle of the group.

Some were waving the flag. All of them had their hands up. Most of them had their hands up. They had agreed to try to talk to the Marshals. That was kind of a mutual agreement between the students, I believe.

And they walked on up. A few, as I say, drifted behind and we were almost in the middle all this time.

I left General Walker. I walked five or six yards ahead of him to hear them talking to the Marshals about, "We want that nigger," and something sparked off the Marshals and they started firing again and a little battle began right there.

Q. While you were walking up there and until you left General Walker did any of these individuals around him throw missiles from a position near General Walker?

A. I didn't notice any.

Mr. Watts: That is all.

[fol. 251]. Cross examination.

By Mr. Gooch:

Q. Mr. Cox, I believe you did not hear General Walker's speech from the monument?

A. Not all of it. I heard the last of it.

Q. What did you hear him say?

A. I heard him say that "We can't . . ." something to this effect. Now not these exact words but, "We can't get anything accomplished by open warfare. And if we could talk to them maybe we could get this thing settled."

Q. Walker said that?

A. Yes, sir, that is what I gathered from it.

Q. I believe when your deposition was taken over in Marks you said you didn't hear any part of the speech, is that correct?

A. I heard the last part of it.

[fol. 252] Q. All right. Let's see.

A. Mr. Gooch, you will notice, I think—

The Court: Just a minute. He hasn't asked you a question yet.

The Witness: Excuse me.

By Mr. Gooch:

Q. May be there. I just wanted to see.

Now I ask you again, did you hear any part of General Walker's speech?

A. I heard the last part of it.

Q. And what did he say?

A. He was saying something to the effect that we could—"If we could talk to them, maybe we could get more accomplished than by just running around, trying to battle them."

Q. I refer you to page 15, of the deposition of Mr. Cox, the last question on Page 15.

Mr. Cox, I ask you, did you hear any part of General Walker's speech? Your answer, yes, sir, I know I heard him say something but I don't remember what it was.

Mr. Watts: That should be, Mr. Gooch, please, sir, "I didn't remember what it was," as I read it. Maybe I misread it.

Mr. Gooch: All right. But I didn't remember what it was.

[fol. 253] By Mr. Gooch:

Q. Now have you remembered, since your deposition was taken?

A. Well, sir, I didn't remember exactly what words he said but I heard the general idea of what he was saying, when he was getting off.

Q. Well, all I am getting you to do now, in March you didn't remember and now you seem to have remembered. I was just trying to find out why?

A. Well, I think there should be a clause or something in there to the effect that I did remember part of it.

Q. Well, it's not here. That's the reason I was asking you that.

A. Yes, sir.

Q. Now, did General Walker say anything at that time about a truce or did somebody else say something about a truce?

A. Well, he said that we should try to talk to them, I believe, and some other guy grabbed a T-shirt and said, "We will use this for a truce flag."

Q. And you and Walker and several others started towards the Lyceum Building?

A. Yeah.

Q. Was this immediately after the speech on the monument?

A. Yes, sir—well, after we had—we had a little conversation [fol. 254] there while the crowd was kind of separating.

Q. Did you see General Walker get down from the monument?

A. Yes, sir.

Q. And you had a few words there. How long would you say, two minutes, three minutes?

A. Oh, five or seven.

Q. Five or seven minutes. Standing around the monument?

A. Yes, sir.

Q. Then you and General Walker, and you have said some 15 or 20 others, started—

A. Yes, sir.

Q. —started towards the Lyceum Building?

A. (Witness nods "yes".)

Q. Is that correct?

A. Yes, sir.

Q. And you walked—how did you walk from the monument toward the Lyceum Building?

A. Just in a normal gait. We were talking, as you would walk and talk to somebody.

Q. What route did you take?

A. Well, along the sidewalk, the best I can remember.

Q. On the south side of the circle or the north side of the circle?

[fol. 255] A. North, I believe.

Q. All right. Then after General Walker had stepped down from the monument—would you step down here, please, sir? Where is that pointer?

The Court: Take the pointer here with you, Mr. Cox.

By Mr. Gooch:

Q. After General Walker had finished his speech at the monument, do you identify the monument to be at just about where University Avenue splits, University circle goes to the north and University circles around—do you identify that as a part of the campus of Ole Miss?

A. Yes, sir.

Q. Then right here at the fork of University Avenue is where the Confederate statue is, is that correct?

A. Yes, sir.

Q. And that's where General Walker made his talk?

A. Yes, sir.

Q. Now, as I understand you, you had not seen General Walker until just a short time prior to the time he stepped down off the monument, is that correct?

A. That's right.

Q. Now after he stepped down off of the monument and you say he conversed with some group there for a few moments—

A. Yes, sir.

Q. Minutes, maybe?

[fol. 256] A. Yes, sir.

Q. —then you say that something was said about a truce talk?

A. He was getting off the monument then.

Q. All right. He was getting off the monument when the truce talk was mentioned, when there was a mention of a truce talk?

A. Yes, sir.

Q. Then he talked around with the boys or the crowd or whoever it was for a few moments?

A. Yes, with two or three of us.

Q. Two or three. Then you say he started towards the Lyceum Building, is that correct?

A. Yes, sir.

Q. And who all was with him?

A. The names?

Q. No, no, how many?

A. Three was—three of us was right with him, walking with him and talking.

Q. How many were following him?

A. There were some in front and some in back. Maybe ten in front, ten in back. Most of them was to the left side, I'll say.

Q. All right. Then you went north of the east and west line through the circle, is that correct?

[fol. 257] A. Went right along in here, north of the monument.

Q. You went north of the monument?

A. Yes, sir.

Q. Did you go all the way past the monument?

A. Yes, sir.

Q. You said you got up at about 30 feet of the Marshals, is that right?

A. Well, that's 30 feet from this tree here. Now the Marshals were over here. And this is a street. I'll say that street is 25 feet.

Q. All right. That would have made you about, then, 55 feet, or 45 to 55 feet from the Marshals, is that correct?

A. Yes, sir.

Q. In other words, General Walker and this group, which you estimate, according to you, some 10 or 15 behind him? And three of you right with him—did you all have ahold of the General?

A. No, sir. I shook hands with him right here at the monument.

Q. Was one of you on each side of the General as you proceeded up there?

A. Yes, sir.

Q. You walked up north of the sidewalk that runs east and west through the campus?

A. Yes, sir.

[fol. 258] Q. Past the flagpole? And up within 30 feet of the street in front of the Marshals and Lyceum Building, is that correct?

A. I walked that far.

Q. Now where did General Walker stop?

A. Well, he stopped, I'll say, right here, I guess.

Q. Now you put him there about a fourth of the distance, to be safe, a fourth or a third of the distance between the flagpole and the edge of the street in front of the Lyceum Building, is that correct?

The Court: Answer out.

The Witness: Yes, sir.

By Mr. Gooch:

Q. Then you went on forward?

A. Yes, sir.

Q. And the truce talk turned out to be what, in—you heard somebody say?

A. "We want that nigger."

Q. You want that nigger. That was the truce talk? Thank you. Will you take the stand again, please?

Now did you have anything in your hands as you walked up there with the General?

A. No, sir.

Q. I guess none of the group that was around him had anything in their hands?

A. You mean the immediate group or the 15 or 20?

[fol. 259] Q. Well, any of them that was around him?

A. Some of them did. When they were going to call the truce, they threw them down at the—about when we got to the flagpole. And everybody raised their hands.

Q. As they walked from the flagpole up—from the statue, monument, up as far as the flagpole, they were, or some of them were, armed with missiles?

A. Well, they could have been. I didn't really notice.

Q. You don't know whether they were or not?

A. No.

Q. Now did you see any rock throwing that night?

A. Yes, sir.

Q. About what time did it start, Mr. Cox?

A. About 8:00, 8:15.

Q. And from 8:15, on, can you describe generally what occurred on the campus that night?

A. 8:15, I was in the YMCA Building. Kennedy was making a speech in there. And that's—about 8:00 is when the tear gas was started.

Q. Incidentally, did you hear President Kennedy's speech?

A. Part of it.

Q. Did you hear him admonish or ask the students of Ole Miss not to engage in any violence?

[fol. 260] A. No, sir.

Q. You didn't hear that?

A. (Witness nods "no".)

Q. All right, go ahead.

A. And the tear gas was beginning to drift in the "Y" Building and I moved on out, just looking around.

And as the night moved on, of course, we just—I didn't—I wasn't stationary, in—I was moving around over the general area there.

And, let's see, the National Guard moved in, I don't know what—I can't relate that.

And the highway patrol moved out and the National Guard moved in after that, or something. I don't remember exactly how that was.

Q. Did you see any groups, small or large, rush forward or go towards the Marshals and throw rocks and sticks and bricks?

A. Yes, sir.

Q. Did you participate in any of those matters?

A. I don't want to answer that.

Q. You just have.

A. (Witness nods yes.)

Q. Did those rock-throwing episodes occur almost throughout the night?

A. Yes, sir.

[fol. 261] Q. Continuously?

A. Well, not in one continuous movement. It just was in and out, not very regular.

Q. Some group would go forward and toss their missiles and retreat and then somebody, some other group would go forward, is that right?

A. That's about it.

Q. Now do you know where the ammunition came from, the majority of the ammunition, where it came from?

A. Well, it came from this new building they had down there. Picked up Coca-Cola bottles over the campus and later they were busting these benches up and taking the concrete from them and throwing it.

Q. Did you go on the campus the next morning?

A. Yes, sir.

Q. What, can you describe what you found there the next morning in the way of rocks and missiles and bottles and glasses and canisters?

A. And empty tear gas shells.

Q. Was there a lot of that around?

A. Yes.

Q. It looked like a real battlefield, didn't it, Mr. Cox?

A. It was a battlefield.

Q. Did you see any cars being burned that night?

[fol. 262] A. Yes, sir.

Q. Did you know about a chemistry professor that was beaten up?

A. No, sir.

Q. Did you know about a photographer that his car was beaten up and his camera smashed?

A. Yes.

Q. Were you—I won't ask you if you participated. Were you near enough to see the car being beaten up?

A. Yes, sir.

Q. Now, Mr. Cox, in September of 1962, you were in what classification at the University?

A. Junior.

Q. You had been there two years already?

A. No, sir.

Q. Well, had you been there any time or were you a new student?

A. New student.

Q. You had not been on the campus before?

A. No, sir—well, not—I had been on the campus to get an application.

Q. I mean had you matriculated?

A. No, sir.

Q. All right. This was your first year?

A. Yes.

[fol. 263] Q. Do you remember about what day in September you went on that campus?

A. The 17th, maybe. I'm not sure. A couple of weeks before that, almost.

Q. Had you been present when Meredith had been barred from the University by Governor Barnett and Paul Johnson?

A. Yes, sir.

Q. Did that create a resentment in you, one way or the other?

A. Yes, sir.

Q. You favored, I assume, Governor Barnett's and the Lt. Governor's actions in barring him?

A. Yes, sir.

Q. You knew, did you not, that the Court of Appeals had directed the entry of Meredith in Ole Miss prior to the 30th of September, 1962, did you not?

A. Yes, I knew that.

Q. Did you know that the order had been entered by that Court to allow him to be admitted to Ole Miss?

A. No, sir.

Q. Well, now what did you know about the legal procedures involving Meredith being admitted to Ole Miss?

A. Nothing much.

Q. You didn't even know that he was supposed to be admitted under court order?

[fol. 264] A. I heard—I had heard.

Q. You just didn't believe it, is that right?

A. Yes, that's right.

Q. All right. You didn't much want to believe it, did you, Mr. Cox?

A. Well, I don't—has that got anything to do with this case? Could I keep from answering that? You are going back into my life, you know.

Q. Sir?

A. You are going back into my life.

Q. Well, now have you got anything to be ashamed of, in your life, Mr. Cox?

A. No, sir.

Q. Well, why don't we hear about it?

A. It's—get you a string of bologna, and I'll tell you about it.

Q. Do what?

The Court: This is argumentative. Do you want an answer?

Mr. Gooch: Yes.

The Court: All right, answer his question.

Mr. Watts: Just answer the question, Mr. Cox.

The Witness: Yes, sir.

By Mr. Gooch:

Q. Now you do recognize that the judgment of courts must be obeyed, do you not, Mr. Cox?

[fol. 265] A. Yes, sir.

Q. Did you feel that you were obeying the order of the court in what you were doing there on the campus there that night?

A. Well, I didn't feel—

Mr. Gooch: You may step down and stand aside. Thank you, sir.

Mr. Watts: Just a minute, before you stand aside.

The Court: Do you have any more questions?

Mr. Gooch: I mean as far as I am concerned.

Mr. Watts: Thank you for the postscript.

Redirect examination.

By Mr. Watts:

Q. Mr. Cox, how old were you when this incident took place?

A. Nineteen.

Q. And you were a Freshman in the University?

A. Yes.

Q. What school were you in?

A. Business.

Mr. Watts: That's all.

Mr. Gooch: I thought you said you were a Junior?

The Witness: Oh, I misunderstood that question. I was a Junior. I'm sorry.

By Mr. Watts:

Q. Were you a Junior when this incident took place?
[fol. 266] A. Yes, sir. Yes, sir.

Q. And how old do you say you were? Nineteen?

A. Yes, sir.

Q. In what school?

A. Business.

Mr. Watts: I see. Thank you.

The Court: Do you want to make your Bill now, Mr. Andress?

Mr. Address: Yes, sir.

The Court: All right, Ladies and Gentlemen, would you step in the jury room, please.

(Jury leaves the courtroom.)

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[fol. 270] (Jury in; the following proceedings were had within the presence and hearing of the Jury.)

TALMAGE WITT, called as a witness by the Plaintiff, having been first duly sworn, testified as follows, to-wit:

Direct examination.

By Mr. Address:

Q. State your name, please?

A. Talmage Witt.

Q. Where do you live?

A. Pontotoc, Mississippi.

Q. Now, most of us folks are not too familiar with Mississippi. What part of Mississippi is that in?

A. That is the north part of Mississippi.

Q. Is that the county seat?

A. I beg your pardon?

Q. Is that a county seat?

A. Yes, sir.

Q. What county?

A. Pontotoc County.

Q. Back in 1962, in the fall of 1962, did you hold any official position over there in Pontotoc County?

A. Yes, sir, I was Deputy Sheriff.

Q. Are you still?

[fol. 271] A. No, sir.

Q. Now, at that time, Sheriff, I direct your attention to September of 1962. Were you at any time in the latter part of September over in Oxford, Mississippi?

A. I was.

Q. Were you there on official business or not?

A. Well, I guess you would say official business.

Q. What was the occasion of your being over there?

A. I was called by the Sheriff of Union County.

Q. When did you first get over there?

A. About 4:30, I believe.

Q. On the 30th?

A. Of September.

Q. On the 30th of September.

A. Yes, sir.

Q. Were there other Sheriffs and Deputy Sheriffs from various counties in Mississippi over there at that time?

A. Yes, sir, there were.

Q. Where did you go when you got over there?

A. I went directly to the campus.

Q. Had you been over there at any time earlier in the last week or so before that time?

A. I was there five days and nights.

Q. Then how long had you been back home before you [fol. 272] went back?

A. I left Friday afternoon, late Friday afternoon, and returned Sunday.

Q. What was the occasion of your being over there on that earlier occasion, Sheriff?

A. We had been asked to go there. The Lt. Governor had met with all peace officers and asked us to try to control students and try to keep down a riot, if we could.

Q. So they were just pulling in peace officers from all over the state to try to keep it down?

A. Four hundred and twenty-five of us were there on Thursday.

Q. At that time was the order being preserved entirely by the officers of the State of Mississippi?

A. Everything was under good hands at that time.

Q. When you got over there on the afternoon of Sunday, the 30th of September, 1962, was anybody else over there in an attempt to preserve the peace, besides Mississippi—

Mr. Gooch: I object to that, leading and suggesting. He can say what he did do. As to whether he was trying to preserve the peace or not—

Mr. Address: I think probably preserving the peace might be a conclusion, Judge, and I will withdraw that.

[fol. 273]

By Mr. Address:

Q. Were there anybody else besides peace officers of Mississippi there on the campus there when you got there, in any official capacity?

A. I don't think so; no, sir.

Q. After you got there, shortly afterward, did anyone else come in, any other officers?

A. There was quite a few officers came in later.

Q. What kind of officers?

A. Constables, Deputy Sheriffs and Sheriffs.

Q. Was anybody else on the campus that afternoon of the 30th of September besides Mississippi officials?

A. Well, now, there were people there from all over. I couldn't say where they were from.

Q. Let me direct your attention and ask you whether or not there were any United States Marshals there?

A. Oh, yes, sir; yes, sir.

Q. What time of day did they arrive?

A. That—they were there when I got there.

Q. They were there about 4:30?

A. Yes, sir.

Q. You didn't see them come on, they were already there?

A. Yes, sir.

Q. When you got there about 4:30 in the afternoon where were the United States Marshals?

[fol. 274] A. They were at the Lyceum Building.

Q. What were they doing around there? Were they in any kind of a formation?

A. Yes, sir, they were lined up completely around the place I would say four or five feet apart, three or four feet apart.

Q. Were they armed in any fashion?

A. Yes, sir, they had tear gas guns, and had their masks on.

Q. These officers, these Marshals all had masks on and tear gas guns with them?

A. I won't say that they had their mask on when I first got there, but before, just before they turned the gas loose sometime or other they put their masks on.

Q. Now, how long were you on the campus that evening?

A. I was there until 5:00 o'clock and then I left for two hours and came back.

Q. You were there just a little bit, you mean?

A. No, 5:00 o'clock in the morning.

Q. 5:00 o'clock in the morning. You were there constantly from 5:00 o'clock Sunday afternoon until—

A. 5:00 o'clock Monday.

Q. To 5:00 o'clock Monday morning. Now, were there other folks there besides the police officers and Marshals? [fol. 275] A. Yes, sir, quite a few.

Q. Well, were they men, women, or mixed?

A. Men or women, boys and girls.

Q. Were you—were they townspeople, students or both?

A. Both. They were from everywhere.

Q. And was there any general gathering or smaller gathering?

A. Oh, they were just in small groups all over the campus, the whole campus.

Q. They were not limited to just this area known as the Circle?

A. Oh, no, sir, they were all over the whole campus. Some were sitting in cars and some were sitting on the steps of the places and on the benches on the campus.

Q. What were they doing when you got there?

A. Well, they were just talking and everything seemed like to be building up.

Q. Later on was there any violence?

A. Not until after the gas was turned loose.

Q. Who turned the gas loose?

A. McShane ordered it.

Q. Who was McShane?

A. He was—I don't know how you would say it. He was [fol. 276] the head U. S. Marshal.

Q. How was the gas turned loose?

A. Well, all at once he just said, "Let them have the gas." And when he did, they done just that.

Q. Where were you when that happened?

A. Approximately twenty feet from them, facing them.

Q. Did you get any gas?

A. I did.

Q. Had you been engaged in any violence or anything of that sort toward the Marshals?

A. No, sir.

Q. What were you doing at that particular time?

A. Well, Paul Johnson, our Lt. Governor, had asked us to try to control the students, but that was a man-sized job.

The Court: He asked you what you were doing?

The Witness: I was standing up there in front of the students and spectators was behind us, and we were facing the Marshals.

By Mr. Andress:

Q. Who do you mean by "we"?

A. The Highway Patrol, Deputy Sheriffs, Sheriffs, Constables; any officer Mississippi had.

Q. In other words, the Mississippi peace officers were between the Marshals—

[fol. 277] A. And the students.

Q. And the students and the other people on the campus?

A. Yes.

Q. Will you state whether they were trying to protect the Marshals from the people or the people from the Marshals?

Mr. Gooch: We will object to that if the Court please. He can testify what he was doing.

By Mr. Address:

Q. Now, Sheriff, prior to that evening had you ever known General Walker here?

A. No, sir.

Q. Did you—when did you first see him that evening?

A. Well, now, it is hard to keep up with the exact time. I would say approximately between 8:30 and 9:00 o'clock.

Q. Do you recall when the Highway Patrol moved out?

A. I don't recall when they moved off the campus. Now, they were—within a matter of minutes after the gas was turned loose they left the Lyceum Building. Where they went from there, I don't know.

Q. Now, where was General Marshal—General Walker when you first saw him?

[fol. 278] A. Coming up University Avenue on the south side, fifteen or twenty steps east of the Confederate monument.

Q. And what direction was he heading at that time?

A. He was heading west.

Q. That would be then—can you see this map here?

A. Yes, sir.

Q. That would be along about in here on University Avenue just before it gets to where it spreads into these two parts of University Circle, is that right?

A. Right.

Q. All right. Who was with him when you first saw him, now?

A. Some young—young fellow. I recognize him since I have got up here. Leman or something like was his name, but I recognized him since I got here; and one of our county drunks was walking along at the side with him. He wasn't with him, but he was the one trying to antagonize everything.

Q. Just General Walker then and this young man, one young man walking along?

A. That's right.

Q. How were they walking?

A. Oh, just walking in a normal walk.

Q. I mean, were they hurrying, moving along, or what?
[fol. 279] A. No, sir, just moving along.

Q. Where was the General as far as the street or sidewalk was concerned?

Q. A. He was on the south side walking up the walk.

Q. And from the time you first saw him, did you know who he was?

A. I heard somebody say, "Here comes General Walker, we have got a leader now."

Q. Did you at that time talk to the General?

A. Just a few seconds after that I stepped out a couple of steps to, maybe, pick out which one it was. I asked somebody if that was him with the big hat on and they said it was. I stepped out to see.

Q. Did you introduce yourself to him?

A. No, sir, he walked up and introduced himself and talked to me a few minutes.

Q. At that time what did he have to say about you making him a Deputy Sheriff?

A. He said something about could I, or would I, deputize him. He said, "Not to help in this matter." He said, "I would just like to be safe to be here to observe what is going on."

I said, "I don't have the authority, General, to deputize you myself, even in my own county," and I said, "This is not [fol. 280] my county."

Q. From that time on how long were you in the immediate company of General Walker?

A. Some four to five hours.

Q. At the time you first saw him, was it like daylight or dark?

A. It was dark.

Q. What was the lighting set up there on the campus that night?

A. Well, it was pretty bad. It was—I won't say students, I will just say spectators and students, were breaking out all the lights they could, and it wasn't too light.

Q. Was there any moonlight that night?

A. I don't think so.

Q. Are there trees in the circle there between the monument and the Lyceum Building?

A. Yes, sir, there are.

Q. A lot of trees, or few?

A. Oh, yes, sir, there is some large trees and small trees.

Q. In the daytime—will you state whether or not that is a shady area?

A. Oh, yes, sir, it is a shady area.

Q. Now, after these lights had been put out, was the visibility good or bad?

A. No, you would have to be close to anybody to recognize who they were.

Q. Now, during this four or five hours that you were with or close by General Walker, what did he do?

A. Not one thing more than I done, or anybody else done over there. He was just there looking.

Q. Will you state whether or not you ever saw him with any kind of missile or anything you could throw in his hand?

A. No, I did not.

Q. Did—will you state whether or not you ever saw him moving around at anything faster than a walk?

A. No, sir, I didn't.

Q. Well, what was he doing as far as his contact with people in the area was concerned?

A. Well, he talked to people. People shook hands with him and talked to him and he just milled around there, around the monument out there.

Q. How close would you say was the closest you ever saw him go toward the Lyceum?

A. Not past the flagpole.

Q. And you are familiar with that campus, aren't you, pretty familiar?

A. Well, pretty familiar, yes.

[fol. 282] Q. Have you got any idea how far it is from the flagpole to where the Marshals were?

A. Not over three hundred feet.

Q. Will you state whether or not the Marshals were over on the west side of the driveway or street there in front of the Lyceum?

A. That is where they stayed most of the time. They got chances to get one or two boys singled out by themselves, they would run out and try to capture them.

Q. But the scrimmage line was there at the Lyceum Building?

A. Right there in front of the Lyceum Building.

Q. From the furthest advance point the General ever occupied, would it have been possible for anyone to have thrown anything from that point to the Marshals?

Mr. Gooch: I object to that, if Your Honor please, that's a conclusion.

The Court: Sustained.

By Mr. Andress:

Q. Mr. Sheriff, how long were you a Deputy Sheriff?

A. Approximately three years.

Q. During that time have you seen unruly crowds?

A. Repeat that.

Q. During that time have you had anything to do with unruly crowds, rioting and so on?

[fol. 283] A. No, sir. No, sir.

Q. You hadn't had any prior experience?

A. No, sir.

Q. Did you hear the General talking to the crowd from the monument?

A. Yes, sir, I did.

Q. Now, prior to the time that he made this talk to the students from the monument, was that the time that he had gone forward about as far as the flagpole, before he made the speech?

A. One time he walked up just a little piece, just a little piece up there. I don't think he went hardly to the flagpole that time.

Q. Was anybody with him?

A. Not particularly. In other words, there was a large crowd of people there. Nobody particularly was with him. But this one young man, and, of course, myself. When you have a figure like that come to Mississippi, I wanted to watch what was going on, and I watched him.

Q. Was there any time you saw him head west from the monument when he was anywhere other than in the middle of a group of people?

A. No, sir, I didn't see it. In other words, any time he would be walking there would be people in front of him as well as behind him.

[fol. 284] Q. When he made this speech from the monument, what did you hear him say, as far as you remember?

A. I heard him say, "People, violence is not your answer. Cuba is yonderway. Protest all you want to but violence is not your answer."

Q. What kind of reaction did he get from the crowd?

A. Oh, he got boos from some. Some of them said, "What is he here for if he is not going to help us? Why don't he go back to Texas."

Q. Now, did he make any statement as to why he was there?

A. He just told me, he says, "I am just here to observe. I am not here to get in this either way."

Q. Do you remember a preacher coming up to see him?

A. Yes, sir, I do.

Q. Do you remember what he told the preacher about what he was there for?

A. Yes, sir.

Q. What did he tell him?

A. Well, he told the preacher he was just there to see what was going on, that he wasn't there to stop or start anything, that he didn't have anything to do with that.

Q. Did you see him at any time you were with him, did [fol. 285] you see him do anything inconsistent with that statement?

A. No, sir.

Q. Now, do you remember anything else he told them when he was making the speech from the monument?

A. He told them, "Protest all you want to." That they had a perfect right to do that, but violence wasn't the answer.

Q. Did you have anything to do with removing the preacher?

A. I moved him.

Q. What was going on that you moved him for?

A. He kept on jerking at the General's coat and everything and telling him to talk to them and break this thing up and that they would listen to him and go home. He said, "Preacher, I am not here to do that." He says, "I can't have anything to do with this."

And he just kept on at him and I heard three men start telling one of them, one of them says, "If we can get that preacher in the right place we will fix him."

Then when the General got up on the monument to make his speech I was on the right side facing east and the preacher came around on the other side and kept on pulling at him and when he did I walked around there and caught him by the arm and asked him to leave and he said he [fol. 286] wasn't leaving and, of course, according to my size and head, I felt like I could do it, and I just picked him up and carried him out of there.

Q. Did you see him any more, the preacher, after you carried him out?

A. No, I led him out of the crowd, out past the crowd and two men walked up and asked me what was I doing with the preacher and I said, "Well, I am afraid his life is in danger and I am going to get him away from here." And they said, "Well, we are friends of his, can we have him?" And I asked him if he knowed the people and he said he did and so I turned him over to them.

Q. Did you see anyone else touch or lay a hand on the General, as far as he was concerned?

A. Nothing only shaking hands with him.

Q. After the General had told this preacher he wasn't there to break it up or participate in it in any way, did he and the preacher have any kind of exchange about what their denomination was, or anything of that sort?

A. Well, General Walker turned around and asked him, says, "Preacher, what denomination are you?"

He said, "Episcopalian. I am an Episcopalian."

And he said, "You make me ashamed that I am an Episcopalian."

[fol. 287] Q. Did that faze the preacher?

A. I don't know. It didn't bother the preacher.

Mr. Gooch: We object to that conclusion, whether it fazed the preacher or not.

By Mr. Address:

Q. After the General finished his speech from the monument, Sheriff, what did he do then?

A. He stepped down and just milled around there, around in front of the monument for a few minutes, and, of course, some of them kept on asking him to lead them and everything and he kept refusing to do that.

Q. Just milling around?

A. Yes, sir.

Q. Do you recall any occasion after he had made his speech and gotten down from the monument when he did go back toward the flagpole?

A. I think maybe, oh, maybe three or four minutes after he got down; might have been five, he walked a little piece up that way, approximately to the flagpole, and they turned another charge of gas loose, and he walked back down.

Q. How did he go toward the flagpole? What was his gait?

A. Walking. Just a common walk.

Q. Were people with him?

A. Well, there were people in the crowd. What I mean,

[fol. 288] there were some out front and they were scattered everywhere.

Q. And were any of the people in that group that were walking up there to the flagpole, did you see any of them at that point running?

A. No, sir.

Q. Would you say that they were walking fast or slow?

A. No, just a common walk.

Q. Now, when was the last time you saw the General that night?

A. Oh, somewhere between 1:00 and 2:00 o'clock.

[fol. 289] Q. And after he had made this speech from the monument and after he had made this other walk up towards the neighborhood of the flagpole with these folks, what did he do in between those times until he left the campus?

A. He just milled around there on the—back down next to the monument there.

Q. Was he doing anything differently from the other people?

A. No, sir.

Q. Was there anything that would attract your attention to him other than the fact that you knew he was General Walker?

A. That's all.

Mr. Address: Pass the witness.

Cross examination.

By Mr. Gooch:

Q. Mr. Witt, at the time you went to the campus of Ole Miss—and you said you were over there five days and five nights before Sunday, September the 30th, if I understood you correctly?

A. The five days and five nights included September the 30th.

Q. All right. Now the reason you were over there was

to keep Meredith from entering the University of Mississippi, wasn't it?

[fol. 290] A. That was what our orders was Thursday.

Q. Now when were those orders changed?

A. After Thursday, we was—well, Sunday night we knew he was there. We had the report he had done got there.

Q. Now you said you went over there Sunday night because Sheriff Faulkner, or somebody called Sheriff Faulkner, or called you?

A. Sheriff Faulkner called me, yes, sir.

Q. You didn't get any instructions that night, did you?

A. Nothing only just come to the campus.

Q. Come to the campus. Now when was it somebody told you that you was over there to keep violence down? Did anybody ever tell you that?

A. Our Governor told us to try to keep down violence if we could—

Q. When was that?

A. That was on a Thursday.

Q. On a Thursday?

A. Yes, sir.

Q. But your avowed purpose for being over there was to try to keep Meredith from coming on the campus, wasn't it? That's what you had been there for?

A. That was Thursday.

Q. Did you get any further word from the Governor [fol. 291] after Thursday?

A. No, sir, I didn't directly, no, sir.

Q. Did you get any direct word from the Lt. Governor after Thursday?

A. No, sir.

Q. You were called Sunday to come over there, is that correct?

A. That's right.

Q. And you had received no other orders than the orders that you had had, to keep Meredith from being registered in the University of Mississippi, isn't that correct?

A. Faulkner, I asked him what was I supposed to do

when I got there and he said, "Try to take care of the students and keep them from starting anything."

Q. All right, now you got there about 4:30?

A. 4:30.

Q. And at that time were the Marshals already on the campus?

A. They were.

Q. And did you see any of the sheriffs and constables at that time?

A. Yes, sir.

Q. How many?

A. Well, now that would be hard to say.

[fol. 292] Q. Well, would you say 400?

A. No, sir, there wasn't—the 400 included the highway patrol. And the highway patrol—some of them was there when we got there but I don't think it would be 400 of them at that time.

Q. All right. Now did you take a position up pretty close to where the Marshals were around the Lyceum Building?

A. I was directly in front of the Lyceum Building, just across that little street.

Q. Did you stay there for a considerable period of time after you got there at 4:30?

A. I believe it was approximately 8:00 o'clock when the gas was turned loose and I left then.

Q. You were there then around the Lyceum Building until the gas was turned on?

A. Yes, sir.

Q. Now prior to the time that the Marshals fired their gas, what was the crowd doing insofar as the Marshals were concerned?

A. You mean before the gas was turned loose?

Q. That's right.

A. Well, nothing. Just standing around. Some of them were thumping cigarette butts towards the Army truck.

Q. Were there any pebbles thrown?

A. No, sir, not as I could see.

[fol. 293] Q. Was there any fire caught on one of the vehicles from a match or cigarette—

A. I believe I recall at one time there was a little fire started and somebody jerked a fire extinguisher and put it out.

Q. Were there any abusive words being spoken?

A. Well, now I imagine there was some bad language when I went over there, yes, sir.

Q. Were the Marshals saying anything or were they standing mute?

A. Marshals wasn't saying—I couldn't hear them saying anything at that time.

Q. But there were being some instruments tossed along with pebbles, lighted cigarettes, matches, et cetera?

A. Repeat that question, Mr. Gooch, please, sir.

Q. There were some insults or strong words being tossed at the Marshals in addition to pebbles?

A. Oh, yes.

Q. Cigarettes, and so forth?

A. There was some harsh words said, yes, sir.

Q. It was after these pebbles, as you described them, were tossed and the cigarettes that the first barrage of gas was fired, is that correct?

A. Now your pebbles, I don't know what you are calling pebbles. I only seen cigarettes, cigarette butts thumped.

[fol. 294] Q. You didn't see any pebbles?

A. No, sir.

Q. Did you hear any of the pebbles bouncing off their helmets?

A. No, sir.

Q. Or anything of that sort. Now you say the gas was fired along about 8:00 o'clock?

A. To the best of my recollection, I would say about 8:00 o'clock.

Q. Was it after dark?

A. Oh, yes, sir, just good dusky dark.

Q. And then after the gas was fired, did you go down towards the monument?

A. Yes, sir.

Q. On account of the gas?

A. Yes. And I did run at that time, too.

Q. All right. Now after you had run down to the monument, did you have an occasion to go back up towards the Lyceum-Building?

A. We would ease back as far as we could but we couldn't—at that time, the gas was floating towards us and we couldn't get back up there.

Q. Was there a riot going on after that gas was fired?

A. That's when it started.

Q. Did that riot grow in intensity as the night wore [fol. 295] on?

A. It went until 5:00 o'clock.

Q. What all did the students throw at those Marshals?

A. Well, I seen them roll up wheelbarrows of brick and they would go to, somewhere in town and get the coca-cola bottles, sticks of wood; would break up the concrete benches—anything they could find.

Q. And what would they do with them when they picked them up?

A. If they could get up close enough, they would throw them at the Marshals.

Q. If they didn't get close enough, they would throw them anyway, isn't that the—

A. No, they didn't throw them until—they didn't want to waste their ammunition.

Q. All right. And they tried to get up close enough to be effective every time they threw them?

A. They would do their best.

Q. You didn't see any of them throwing unless the thrower had a reasonable opportunity of hitting his mark, is that right?

A. Well, now when the National Guard came through, or any other cars, as far as that's concerned, they tried to take care of them as it came through.

Q. You mean with bricks and stones?

[fol. 296] A. Yes, sir.

Q. And so from—and so forth. Did they do a pretty good job of it?

A. Yeah, I thought they done a good job.

Q. Did they set any automobiles on fire?

A. They burned and destroyed 16 cars.

Q. Was that during the time you were there?

A. Yes, sir.

Q. Between 4:30 in the afternoon and about 5:00 o'clock the next morning?

A. That's right.

Q. Prior to the time you saw General Walker come on the campus, were the students throwing rocks and stones and bricks and sticks at the Marshals?

A. They were throwing them before he got there and after he got there.

Q. Was it obvious to anybody that wanted to look that there was a riot going on at the time General Walker got on the campus?

A. Yes, sir, anybody could have told that.

Q. Were the students actually in the process—I don't mean continuously but in sporadic spurts, tossing their bricks and stones and missiles at the Marshals at the time General Walker got to the campus?

A. Before he got there?

[fol. 297] Q. Yes, sir.

A. Yes, sir.

Q. At the time he got there?

A. Yes, sir; they never did stop hardly.

Q. All right. Then you could plainly see from where you were down around the Confederate monument these charges or rocks and bricks and stones being thrown at the Marshals?

A. I could see them run up there with a brick in their hands.

Q. But could you see the arm movement of throwing?

A. Until they broke out a lot of the lights, I could.

Q. All right. Now there was considerable light in front of the Lyceum Building, was there not?

A. At one time there were. They eventually broke out every light.

Q. Well, I know, but there were some lights under the canopy of the Lyceum Building that stayed on all night, were there not?

A. Some of them stayed on all night but the Marshals had to turn their lights on their cars and jeeps.

Q. You could see the Lyceum Building, or the lights from the Lyceum Building, from the monument, could you not?

A. Well, you could see the lights but within that mist of tear gas, it was hard to see the building. And when it was too thick, you couldn't even see the lights.

[fol. 298] Q. But you could, if you walked up there around the flagpole, see pretty well what was going on around the Lyceum Building, couldn't you?

A. Not too good when the lights was—when that gas was there.

Q. I know, but did the gas lift and then come some more gas?

A. There was plenty of gas turned loose.

Q. That was quite obvious to everybody, both from a sight and a nostril standpoint, wasn't it?

A. Yes, sir.

Q. You stated that you saw General Walker as he approached the campus and I believe you said on the south side of University Avenue?

A. Yes, sir.

Q. And about how far was he from the monument when you first saw him?

A. I would say approximately 15 steps.

Q. Was there anybody at all with him or was he alone?

A. There was a young gentleman with him and this other fellow that I am referring to as Gene Connelly staggered up from somewhere. He wasn't with him but he staggered up from somewhere.

Q. Just the two of them, so far as you know?
[fol. 299] A. Yes, sir.

Q. As he got in closer to the monument, did anybody group themselves around him?

A. Well, there was a few walking up to him to shake hands with him and talk to him.

Q. Was anything said about, "Here is General Walker," or "Here is our leader"?

A. Yeah, I heard some of them say, "Here comes General Walker."

Q. Did they say, "Here is our leader"?

A. Said, "Yeah, we've got a leader now."

Q. Hear any of them ask him where his volunteers were?

A. I don't recall that now for sure, no, sir.

Q. All right. After he had been greeted there, did you go to him or did he come to you?

A. Well, I believe he walked up in the crowd where I was at. There was a, eight or ten of us standing up there, the crowd, and he seen my badge. We had orders to put our badge out on our coat and a white rag around our arm.

Q. All right. He walked over to you, did he?

A. Shook hands with me and introduced himself and said, "I would like for you to deputize me, so I can help in this matter." He said, "I'm just here to observe."

Q. Now what did he exactly say? What did he exactly say?

[fol. 300] A. He said, "I would like for you to deputize me while I'm here so I won't, nothing will happen to me."

He said, "I'm not here to help in this matter in neither way but," he said, "I would just like to be on the safe side."

Q. Are you sure he said all that to you?

A. Well, Mr. Gooch, it's hard to remember everything that was said back that far.

Q. That's right, I know that, and I'm referring somewhat here to your deposition which was taken in March.

Now is your recollection better now than it was on March the 13th, 1964? I am asking you if it is?

A. Well, now I remember him walking up to me and shaking hands and say, "I would like for you—"

The Court: That wasn't his question, sir. His question was, is your recollection better now than it was on March the 13th of 1964.

A. Well, now I wouldn't say that it was.

By Mr. Gooch:

Q. All right. I recall, and we will get to it in a moment, that you said that what transpired between you, that you shook hands and he asked you to deputize him. That's all he said. And that you told him that you did not have the authority to deputize him, let alone in that county, but you were from a different county and couldn't deputize him if you wanted to?

[fol. 301] A. That's right.

Q. Now that's what I understood you to say in substance in March. I don't believe you mentioned anything about so he would be on the safe side or any of that sort of thing. We will get to that in a moment, though.

Now what is your best recollection now?

A. He shook hands with me and asked, "I would like for you to deputize me."

Q. All right.

A. And I told him, I says, "General, I don't have the authority to deputize you in this county, much less than my own," and I said, "This is not my county."

Q. Now that is substantially what was said between the two of you there?

A. As best as I can recall, yes, sir.

Q. All right. That's the later version and is now what you say you think happened?

A. Yes, sir.

Q. Now after he asked you to deputize him and you declined, what did he do?

A. Are you asking me a question?

Q. Oh, yes. What did he do after he asked you to deputize him, what did he do then?

A. Well, he just milled around there by the monument a while there.

[fol. 302] Q. Then what did he do?

A. Then he walked up a little closer. I heard him say something about, "We'll walk up a little closer and see what's going on."

And he walked up somewhere in the neighborhood of the flagpole.

Q. Did anybody go with him?

A. Well, not particularly go with him. Now the young man that was with him, walked with him, and then of course there was some behind him that just watched him as he walked up there.

Q. And you say nobody particularly went with him?

A. I don't think they called themselves going with him.

Q. I'm not talking about what they called themselves. I'm asking you if a number of people followed General Walker up towards the flagpole?

A. Well, there was some went in front of him and some went behind him, yes, sir.

Q. All right. Would you attempt to fix the number that was behind him?

A. Well, I don't really—somewhere in the neighborhood of three or four hundred.

Q. Now that's when he went up towards the flagpole the first time?

[fol. 303] A. I believe—yes, sir.

Q. Some three or four hundred went along behind him?

A. Well, no, let me back up on that just a little bit, Mr. Gooch.

Q. Well, go ahead, back up, either way you want.

A. I don't see that three or four hundred followed him because that dark, it would be hard for me to tell how many people followed him.

Q. Yeah.

A. I would say there was that many people behind him at that time in that area right down there.

Q. Well, were they just standing there or were they moving towards the flagpole with him?

A. Some people didn't move at all. Some people sit around on the benches. Some sit on the steps and didn't move.

Q. And some of them moved along with him up towards the flagpole, is that correct?

A. Some moved in front of him and behind him, yes, sir.

Q. All right. Now did you say how far he got on that occasion? Did he get up near the flagpole?

A. Somewhere close to the flagpole. I don't recall of him ever walking past the flagpole.

Q. Now did any incident occur with respect to Reverend Gray, this preacher that you referred to? I don't know [fol. 304] whether you mentioned his name as Gray or not. Was it Duncan Gray?

A. I don't know what his name was.

Q. Well, a preacher, anyway?

A. Yes, sir.

Q. You referred to him as "a preacher"?

A. Yes, sir.

Q. Did any conversation occur between General Walker and Reverend Duncan Gray or this preacher at the time he went up to the flagpole the first time with this crowd following him and on his way back?

A. Well, that was just before he went on the flag—up on the monument to make a speech.

Q. Uh-huh.

A. As he started back, the preacher kept nagging at him and pulling his coat, to try to stop the crowd.

Q. What did the preacher ask him to do?

A. He said, "General," he said, "This crowd will listen to you. Talk to them and have them go home. This is no good."

Q. Did he ask him to stop the rioting?

A. Yes, sir, he said, asked him to stop the rioting.

Q. What did the General reply?

A. He told him, he said, "I didn't come here—" He said, "I couldn't stop it if I wanted to." Said, "There's nothing [fol. 305] I can do."

Q. He said he wouldn't stop it if he could?

A. No, sir, he didn't say that.

Q. He didn't say that. All right. Then you say General Walker went back down around the vicinity of the monument. Now was there something said about him making a speech?

A. They kept on at him to make a speech.

Q. Now did the preacher attempt to get General Walker, while he was making his speech on the monument?

A. One time he came around on the left-hand side, which was the north, the way I was facing, to reach to him again. That was after I heard him be threatened and I walked around in front of General and caught him and drug him out in there.

Q. You are anticipating me. Did the preacher, as you refer to, did he ask General Walker while he was on the monument to try to stop the riot?

A. I don't recall of him getting to say nothing to him because when he reached up to catch his britches leg, that's when I reached and grabbed him.

[fol. 306] Q. So you got the preacher out of there, is that correct?

A. Yes, sir.

Q. All right. How many people would you say was on the campus there in the Circle—the Circle, now, and as distinguished from the campus, at the time General Walker was making his speech out there on the monument that night?

A. You mean in the Circle, or in the whole area around there?

Q. That whole area around the Circle, the flagpole, the Lyceum Building and the monument.

A. When I first got there I would say 400 people, in the whole area.

Q. How many was around the monument while he was making his speech?

A. Mr. Gooch, that is going to be hard to say. Somewhere in the neighborhood of one hundred people, maybe.

Q. All right. Now, tell me again what you heard General Walker say?

A. Well, I heard him say, "Violence is not the answer. Cuba is yonderway." And he pointed to the southerly direction. He told them, "Protest all you want to." They

have that right. And I heard him say something about help is on its way.

[fol. 307] Q. "Help is on its way", you heard him say to the crowd, "Help is on its way"?

A. Something like that, yes, sir.

Q. All right. Now, what happened after he finished his talk on the monument?

A. He got off and talked around there to a few other people, milled around there a little bit, say four or five minutes, and he walked up toward the flagpole again.

Q. When he walked up toward the flagpole again now, that was the second time he had gone toward the flagpole, is that right?

A. Yes, sir.

Q. When he walked up to the flagpole again did anybody follow him?

A. Well, there were people there walking. I don't know whether they called themselves following him or not.

Q. All right. And was he in front—a—

A. No, sir.

Q. —of anybody behind him?

A. Well, he had to be in front of somebody that was behind him.

Q. All right. They were not in a single bunch in one pile, were they?

A. No.

[fol. 308] Q. They were not walking completely abreast, were they?

A. No, sir. I would say there were as many in front of him as there were behind him.

Q. All right. We will get down to that in a little while. Now, did he make any remarks as he started up there, this second trip toward the flagpole?

A. I don't remember him making any remarks about anything. He talked to people, shook hands with people as he went along, you know. In other words, he didn't walk directly toward the flagpole. He was walking awhile criss-crossing around and shaking hands and talking.

Q. How many would you estimate were in the crowd that went up that time?

A. That is still hard to say, Mr. Gooch. Like I say, there were people in every direction.

Q. How many would you say?

A. In whole area?

Q. No, around General Walker at the monument, when he started and you went with him toward the flagpole?

A. Well, I don't know how far from him you would have to say was around him. In other words, naturally, there was people, some in front and behind him, but they were scattered out for a quarter of a mile from him all during the time he was there.

[fol. 309] Q. Now, you stated on direct examination that you never saw General Walker doing anything, that, I believe you said, nobody else did. Did you make a statement like that?

A. Yes, sir, but I thought that over a little bit.

Q. Yes, sir.

A. I seen some of the rest of them lead some of the violence and I didn't see him doing that. I will say this, I didn't see him doing anything more than I done.

Q. Did you throw anything towards the Marshals?

A. No, sir.

Q. Did you go towards the Marshals?

A. I went in the Marshals' building.

Q. I mean did you go up there with him up towards the Marshals?

A. No, sir, not particularly. I tried to watch the students, what they were doing, while they were in—while they were engaged in that kind of stuff, yes, sir.

Q. Did any of these crowd, or whoever it was that went with General Walker toward the flagpole, on either occasion you have testified about him going to the flagpole, have anything in their hands in the way of missiles, rocks or stones?

A. I seen some of them in the crowd with bricks in their hands.

[fol. 310] Q. Were they following along beside General Walker?

A. No, sir, the ones with the bricks would be more or less in front of him and out at each side.

Q. And out at each side?

A. Yes, sir.

Q. As they got up to this flagpole, could you see any of them throw the rocks?

A. They couldn't throw from the flagpole on up there. They would try to work on up close.

Q. Did you see any of them throw a—

A. Not down at the flagpole.

Q. I mean in the group with General Walker. Did you see any of them throw?

A. Not at the flagpole.

Q. I mean in the group with General Walker?

A. No, sir, not that group.

Q. Any group?

A. I did later when they tried to work on up closer when the gas would go down.

Q. You said General Walker said, "Violence is not your answer." Or did he say, "No violence is intended?" Do you know which he said?

A. Yes, sir, I sure do.

Q. What did he say?

[fol. 311] A. He said, "Violence is not your answer, Cuba is yonderway."

Q. He did not say, "No violence was intended?"

A. No, sir, I didn't hear him say that.

Q. He said, "Cuba is yonderway."

A. Yes, sir.

Q. He said, "Protest all you want, you have got a right to do that"?

A. Yes, sir.

Q. Then did he say this: "Protest all you want to, they might run out of gas, help is on its way, thousands are coming"?

A. I believe I remember hearing some statement like that, yes, sir.

Q. You testified before that is exactly what he said.

A. Well, yes, sir, I heard that.

Q. He said that while he was on the monument?

A. I believe that's right, yes, sir.

Q. All right. Did you hear him tell the students that Birdsong had sold them out?

A. No, sir. The main reason he got up there to make the speech, some of the students—

The Court: Wait just a minute. You tell what you saw and what you heard and don't give us what somebody else [fol. 312] may have done.

A. All right. He got up to make the speech. He didn't say Birdsong sold them out. He told them Gov. Barnett hadn't sold them out. He said, "I have heard Birdsong is the one that sold you out."

Q. Well, I quote again from page 24 of your deposition when you said, "Gov. Barnett did not—didn't sell you out, Birdsong did."

Do you remember making that statement?

A. Yes, sir, I do.

Q. Now, you say there was never a large crowd following Walker toward the flagpole?

A. No, sir.

Q. Are you saying there wasn't, or you didn't say that?

A. I am saying they weren't following him after he made his speech and wouldn't lead them the crowd more or less got irritated at him.

Q. The first time he went up before he made the speech, did anybody follow him up then?

A. Some came along, yes, sir.

Mr. Gooch: All right, could we have a recess before I finish with this witness?

The Court: Yes, sir. Ladies and Gentlemen of the Jury, let's recess until 3:30.

[fol. 313] Mr. Address: After the Jury is out, could I make my Bill?

The Court: Let's get it done now, yes, sir.

(Jury out; the following proceedings were had outside the presence and hearing of the Jury.)

Mr. Address: Sheriff, each time you saw General Walker over there that evening, did you ever see him leading a charge?

A. No, sir, I did not.

Mr. Address: That is all.

The Witness: I may get a little scared up here in front of all these people and the Judge and everything.

Mr. Address: That is all.

The Court: All right, we will recess.

(Short recess was had.)

[fol. 314] The Court: Mr. Watts is getting the original depositions. He will be here in just a minute.

All right, Mr. Gooch.

By Mr. Gooch:

Q. Mr. Witt, I don't know whether you would agree with a description such as this or not, but on this particular night, were you nattily dressed?

A. Well, I had my dress pants and coat on.

Q. Well, would you consider yourself to be nattily dressed?

A. Well, I hadn't thought of it either way but I guess you would say yes.

Q. All right. Are you a portly man?

A. Well, now, that's a matter of opinion.

Q. Let's see if we can get it in the record, then. How tall are you, Mr. Witt?

A. About five, eleven.

Q. And how much did you weigh on September the 30th, 1962?

A. About 275.

Q. All right, sir. Now, Mr. Witt, do you remember when your deposition was taken over in Oxford, Mississippi, by Mr. Watt, on the 13th of March, 1964?

A. I don't remember the date but I remember giving the deposition, yes, sir.

Q. Do you recall, also, that there was some cross ex-[fol. 315] amination at that time after Mr. Watt had finished—

A. I do.

Q. —examining you?

A. Yes, sir.

Q. Now read along with me here. So we will get the continuity, I am reading from the deposition of Mr. Witt that was taken by Mr. Watt, Counsel for General Walker, on the 13th day of March, 1964, in Oxford, Mississippi.

Mr. Witt, if I—

Mr. Watts: Might I inquire, what page, please, Mr. Gooch?

Mr. Gooch: Page 29.

Mr. Watts: Is this my examination or your cross examination?

Mr. Gooch: Cross examination, Mr. Watts.

The Court: Cross.

Mr. Address: Judge, at this point, I would like to interpose an objection for this reason: The way you impeach a witness is to ask him the same question and then if you get something different, then you can go ahead and read what he says before, and not the way that Counsel has been doing it.

I have let it go along but I do think we ought to do it right, and, therefore, I would like to make an objection to it until the proper predicate is laid.

[fol. 316] The Court: Overruled.

Mr. Address: May it go to the entire line here?

The Court: Yes.

By Mr. Gooch:

Q. To get the continuity, this question was asked: "Mr. Witt, I understood on the afternoon of September 30th, 1962, you got a call and did the call come to you or did it just come to the Sheriff's office?"

Your answer, "It came to me," is that correct?

A. That's right.

Q. It came to you personally?

A. Yes, sir.

Q. And that was Sheriff Faulkner from New Albany?

A. Yes, sir.

Q. And the answer was, "From Union County, yes, sir." Was that your answer?

A. Yes, sir.

Q. "Did he tell you why he wanted you to come to Oxford?" And your answer, "He told me to come over there."

Mr. Watts: Just a minute, please, Mr. Gooch. You skipped.

Mr. Gooch: "He told us to come over there."

Mr. Watts: Right.

By Mr. Gooch:

Q. "I believe it was Friday afternoon, that if we didn't get called back, not to come back until Monday," is that correct?

[fol. 318] A. That's right. Or until we was called.

Q. "Question—"

A. Or until we was called.

The Court: Right now he is just asking you whether or not what you said in this deposition was said at the time you gave that deposition.

The Witness: Yes, sir.

By Mr. Gooch:

Q. Now at the time you gave this deposition, you were under oath as you are today; did you understand it at the time?

A. Yes, sir.

Q. "Question: I see. You had been over here previously?" And your answer, "Yes, sir, I had been here five days and nights." Is that correct?

A. Yes, sir.

Q. "You had been over here five days and nights?"

A. "Yes, sir."

Q. Is that correct?

A. Yes, sir.

Q. "Were there a lot of officers over here at that time?"

"Answer: Yes, sir, I believe they estimated down here at the Army Building that there was sheriffs, highway patrol, constables, and so forth, 425 men."

A. "Yes, sir."

Q. Did you make that answer?

[fol. 319] A. Yes, sir.

Q. Was it true?

A. Yes, sir.

Q. "Question: 425 officers had assembled here at Oxford and had come to the University for a number of days?"

Your answer, "I don't know if it would have been the same crowd every time. That was on Thursday. The day he was supposed to have come in here, they estimated 425."

A. Right.

Q. "Did that include the highway patrol?"

And you answered, "Yes, sir," is that correct?

A. Yes, sir.

Q. "The highway patrol, peace officers, sheriffs and deputies?"

And you answered, "Yes, sir," is that correct?

A. Yes, sir.

Q. "Why were they here?"

And you answered, "That was the day he was supposed to come in here, on Thursday, Meredith."

"Question: And what was the purpose of the officers being here when Meredith came in?"

And you answered, "To stop him from getting in".?

A. Yes, sir.

Q. "Question: To stop him from getting in?"

You answered, "Yes, sir." Is that correct?

[fol. 320] A. Yes, sir.

Q. "To prevent him from getting on the campus?"

And you answered, "That is right"?

A. Yes, sir.

Q. "Question: That was what you understood was the purpose that you all were assembled here for?"

And you answered, "Yes, sir."?

A. Yes, sir.

Q. Is that correct?

A. That's right.

Q. "And that was the object that you had in mind, to prevent Meredith from getting on the campus and enrolling in the University?"

And you answered, "Yes, sir."?

A. Yes, sir.

Q. And you said—is that correct? "The court reporter can't get your nod."

And you answered, "Yes, sir." But they did disarm us," is that correct?

A. That's correct.

Q. "Question: They did what?"

"Answer, they had taken our guns on the Thursday now. They had taken our guns away from us.

"Question: Who did that?"

Your answer, "The Lt. Governor, Paul Johnson." Was [fol. 321] that answer correct?

A. That's right.

Q. "Question: But you still, after your guns were taken away from you, you were still here as I understood it, and as your orders and directions were, and the information given you from the officers in charge, you were still here for the purpose of preventing James Meredith getting on the campus and enrolling as a student at the University?"

And your answer, "Yes, sir."?

A. Yes, sir.

Q. Well, is that correct?

"Question: After you got the call from Sheriff Faulkner on September 30th, you came on to Oxford, is that correct?"

Your answer, "Yes, sir."?

A. Yes, sir.

Q. Was that true?

A. That's right.

Q. "Did you go directly to the campus of the University?"

Your answer, "Yes, sir."?

A. Yes, sir.

Q. Correct? "Did you say who was with you at that time?" You answered, "Cecil Payne," is that correct?

A. Right.

[fol. 322] Q. "Now Cecil Payne is another Deputy Sheriff of Pontotoc County?"

And you answered, "Yes, sir"?

A. Yes, sir.

Q. Is that correct? "Now when you got on the campus at the University, the first tear gas had not been fired, had it?"

And you answered, "No, sir." Was that correct?

A. That's right.

Q. "And when you went up to the Lyceum Building just what was the situation that you observed there at the Lyceum?"

You answered, "The Marshals were in front of the Lyceum Building and we had gathered up on both sides. Our orders was to try to control the students and to keep them from doing anything violent."

Did you make that answer to that question?

A. I did.

Q. Now the rest of it—well, we will go on with it.

"There is a street that runs in front of the Lyceum Building?"

You answered, "Yes, sir," correct?

A. Yes, sir.

Q. "And you officers were out in the street in front of the Lyceum Building?"

"Answer, just across the street, we were just on the [fol. 323] curb back from the street."

"Question: Now the students and the crowd, you said you didn't know whether they were all students or not, but the crowd was assembled over in this circular area that is called the circle right across the street from the Marshals?"

And you answered, "Yes, sir"?

A. Yes, sir.

Q. "Question: Now when you first got there, what would you estimate the number in that crowd was then?"

You answered, "When I first got there just around 400 or 500 people, when I first got there." Correct?

A. Yes, sir.

Q. "500 people?" And you answered, "Yes, sir." Is that correct?

A. Yes, sir.

Q. "Now did that crowd constantly grow?"

And you said, "Oh, yes, sir," is that correct?

A. Yes, sir.

Q. "As the night went on and the whole crowd on campus grew, didn't it?"

And you answered, "Yes, sir"?

A. Yes, sir.

Q. "Between the time when you first got there, which you estimated at 4:30, and the time of the first tear gas [fol. 324] which you estimated at 6:00, I believe that is correct?"

And you said, "That is just a guess"?

A. Yes, sir.

Q. Was that your answer?

A. Yes, sir.

Q. "I understand that is just a guess, approximately."

You answered, "Yes, sir."

"Were you there all the time?"

And you answered, "Oh, yes, sir, I was there until 5:00 o'clock the following morning." Was that correct?

A. That's right.

Q. "Sometime along there the highway patrol left, didn't they?"

"Answer: Yes, sir, shortly after the gas was released, they left, I would say, within five minutes." Is that correct?

A. That's correct.

Q. "And most of the law officers left?"

And you answered, "Yes, sir"?

A. Yes, sir.

Q. "Question: In fact you were just about the only law officer that stayed on there, weren't you?"

And you answered, "Me and Jim Garrison was the only ones that I remember," is that correct?

A. That's correct.

[fol. 325] Q. "Question: Jim Garrison, that is the Deputy Sheriff from Lafayette County?"

"Answer: Yes, sir.

"Question: And you are the only two law officers that remained there on the campus to try to help that night?"

And you answered, "The only ones I could see, yes, sir"?

A. Yes, sir.

Q. Was that correct?

A. That's right.

Q. "Now just prior to the time the first tear gas was fired, the crowd had gotten a little unruly, hadn't it?"

And you answered, "Oh, yes, sir." Is that right?

A. Yes, sir.

Q. "Question: There was a good deal of cursing going on, wasn't there?"

And you answered, "Yes, sir." Was that correct?

A. Correct.

Q. "And you heard a lot of profanity?"

And you answered, "Yes, sir"?

A. Yes, sir.

Q. "And the crowd was getting to what you would call restive, they were unruly, weren't they?"

And your answer, "At that time before the gas was turned aloose, they had thumped cigarettes and cigar butts [fol. 326] and they had struck matches and thrown on top of the canvas of the Army trucks and some of them at the Marshals?"

A. Right.

Q. Was that correct?

A. That's correct.

Q. "Question: Trying to set the things afire?"

And you said, "Well, I don't know." Is that correct?

A. Correct.

Q. "Did any of this canvas, these canvas tops, catch afire?" You answered, "At one time I recall that the canvas did sort of blaze up just a little bit and somebody put it out with one of the extinguishers."

Did you make that answer?

A. Yes, sir.

Q. Is that correct? "Do you remember the occasion when a photographer came in, he and his wife in a car, and they took their car and broke up the camera, that happened before the tear gas was fired, didn't it?"

And you answered, "No, sir. I didn't see any cars destroyed until after—" He—is that correct?

A. That's correct.

Q. "Question: I don't mean the car was destroyed, his camera, his Kodak was destroyed, do you remember seeing that before the tear gas was fired?"

[fol. 327] Answer, "No, sir, I don't remember that." Was that correct?

A. Yes, sir.

Q. "You say the crowd had grown unruly before it was fired, now after the tear gas was fired, then the crowd really got violent?"

And you answered, "Yes, sir"?

A. That's right.

Q. Is that correct? "In other words, there is no way of describing it except it was just a riot, just a mob, a violent mob, that is what it was, wasn't it?"

And you answered,—

A. Yes, sir.

Q. That was right?

A. Yes, sir.

Q. "Question: This violent mob was undertaking then to do anything they could and any harm they could do to the Marshals and to the property there on the campus, wasn't it?"

You answered, "Yes, sir."

Mr. Address: This is all repetitious. He's been through this.

The Court: We have gone through this. What is the purpose?

Mr. Gooch: I am trying to get the continuity. I'm getting down to where I consider it impeachment.

[fol. 328] The Court: All right.

Mr. Address: Pretty long as a preface, Judge.

Mr. Gooch: I was just trying to make the continuity but I will skip over.

By Mr. Gooch:

Q. Now you have previously testified that they were getting bricks and stones and sticks from whatever source available, have you not?

A. Right.

Q. And were they getting a considerable number of them at the new Science Building down there at Hume Hall?

A. I presume that's where they were coming from. I couldn't say where they was coming from.

Q. All right. On Page 38, "Question: Now this whole crowd out there—" It's the third question on Page 38.

Mr. Address: Line 9?

Mr. Gooch: Well, mine isn't lined, Mr. Address, so I will have to call it the best way I can.

By Mr. Gooch:

Q. "Question: This whole crowd out there, you say it wasn't organized, but that whole crowd or group of people out there in that area which you have estimated at least one thousand, they were participating in this thing, weren't they?"

Answer, "I wouldn't say, Mr. Smith, that everybody was throwing, but the crowd would go together as long as they could."

[fol. 329] "Question: And that happened not just once or twice, that happened numerous times?"

Answer, "That happened all night long until 5:00 o'clock."

Is that correct?

A- That is wrong. I remember giving the statement but I misunderstood the question and answered it wrong.

Q. All right.

A. If you will go on and read, you will find that somebody in the crowd asked me then to mark a circle where this thousand people was at. And it's completely around, surrounding the whole area.

Q. All right. All right. And the last question on the page, "And the ones in front would throw at the Marshals, wouldn't they?"

And you answered, "Yes, sir," is that correct?

A. When they would get up close, they could, yes, sir.

Q. "Now that was taking place before and at the time General Walker got there, wasn't it?" That's Page 39.

You answered, "Yes, sir," is that right?

A. Right.

Q. "And in those crowds that you say they would all surge up that way, some of those crowds that would surge up that way in your judgment would amount to one thousand people?"

[fol. 330] And your answer, "Yes, sir."

A. I was wrong on that, Mr. Gooch.

Q. All right. Now, how many were there?

A. I don't know. The thousand people included the people sitting in their cars, on the concrete benches that the campus had there and on the doorsteps and everything, and I don't know. I would say 15 to 50 people sometimes maybe would go in a crowd.

Q. All right. You are wrong then, you say you were wrong when you said a thousand people, you were wrong to the extent of the numbers, is that correct?

A. To the extent of number following in any group. Some of them never got out of their cars.

Q. Going down to one, two, three, four, five, the sixth question, "Now when General Walker got there, I believe you say that you didn't know him?"

And you answered, "No, sir"?

A. Right.

[fol. 331] Q. You had heard of him? Answer: "I heard of him." Question: "You knew who he was?" And you answered, "Yes, sir," is that correct?

A. When they pointed him out to me, yes, sir.

Q. All right. The one, two, third question on page 40, "But you did know he was a national figure and recognized as a prominent man?" And your answer, "Oh, yes, sir." Is that correct?

A. Yes, sir, that is correct.

Q. The last question on page 40, "How far, when you first saw him there, how far would you say he was from the monument, approximately?" And you answered: "Not over forty feet."

Is that correct?

A. That is correct.

Q. "Do you know how long he had been standing there before you saw him?"

Answer: "Well, no, sir, I heard the students say 'here comes General Walker' and they said, 'we've got a leader now.'"

Is that correct?

A. That's right.

Q. "When General Walker came on campus and the word began to get around, the word just went over the crowd, didn't it?"

[fol. 332] And your answer: "Yes, sir."

Right?

A. Right.

Q. "It was just like a wave going out over that crowd, 'General Walker has gotten here', and is that right?"

And your answer: "Yes, sir."

Is that right?

A. Yes, sir.

Q. "And that made an impression on that crowd, didn't it?"

And your answer: "Yes, sir."

A. Yes, sir.

Q. "And you could tell the difference in their attitude and their demeanor when he got there and they figured that they had a leader? It made a difference, didn't it? There was more enthusiasm, wasn't there?"

And your answer, "It looked like it, yes, sir."

A. Yes, sir. I am wanting to back up on one thing right there.

Q. Yes, sir?

A. After he made his speech I believe the biggest majority of them turned against him, after they found out he was not going to lead them. They didn't think too much of him then.

Q. All right. The next question: "And this crowd be- [fol. 333] came enthusiastic and they began to say 'General Walker is here, our leader is here', and when you heard that you began to look for him, didn't you?"

Answer: "I moved to one side where I could see him, naturally. I was like the students, I wanted to see what he looked like."

Is that correct?

A. That is correct.

Q. "You had on your Deputy Sheriff's badge, didn't you?"

Answer: "Yes, sir,"

A. Yes, sir.

Q. On top of page 42—before we get to that question I will ask you again, did you go to General Walker or did General Walker come to you?

A. I will say General Walker walked to where I was standing.

Q. All right, that is what you said in your deposition, "And when you walked down to General Walker, or walked down towards him, did he come to meet you when he saw that Sheriff's badge?"

Answer: "He came to me."

Right?

A. Right.

Q. Question: "He came to you?"

[fol. 334] Answer: "Yes, sir."

Is that right?

A. Yes, sir.

Q. "How far did he walk to get to you, when he saw you?"

Answer: "Just a few feet west of the monument."

Is that correct?

A. Yes, sir.

Q. "And so you and he did stand there for a little space of time and talked, didn't you, when he was asking you—"

Answer: "He introduced himself to me and shook hands with me and he said he would like for me to deputize him and I told him I didn't have the authority to deputize him, even in my own county, and this wasn't my county."

A. That is correct.

Q. That is what you testified to on your deposition?

A. Yes, sir.

Q. Is that correct?

A. That is correct.

Q. That is correct there?

A. Yes, sir.

Q. The other matters you threw in are not correct?

Mr. Watts: If Your Honor please, I object to that. That is argumentative and an improper question.

[fol. 335] The Court: Sustained.

By Mr. Gooch:

Q. "So he was standing there talking to you at that time?" That is the next question, and you answered: "Yes, sir."

A. That's right.

Q. All right. The first question on page 43, "You never did talk to him personally any more that night?"

And your answer: "No, sir."

Is that right?

A. That's right.

Q. "What happened then, when you and him stood there and talked a little bit and he asked you to deputize him and you told him you couldn't do it, you and he shook hands, just what happened then?"

Answer: "Students kept on begging him to lead them and he told them he wasn't over there to participate in none of the violence or anything and he said, 'I am just over here to observe', he said, 'let's walk up closer to the front, I'll walk up closer to the front and see if we can see what is going on'".

Was that your answer?

A. Yes, sir.

Q. Question: "Now, that was before he made the speech?"

Answer: "Yes, sir, he just walked a little piece up that [fol. 336] way and then when the gas turned alose, he came back down and that is when he got on the stand and made his speech."

Did you make that answer?

A. Yes, sir.

Q. Question: "Now, when he walked up that way, you know where the flagpole is out in the middle of the Circle?"

And your answer: "Yes, sir."

Is that correct?

A. Yes, sir.

Q. "When he walked up to the flagpole, that was when he had the first encounter with the preacher, Duncan Gray, didn't he?"

And your answer: "Yes, sir, when he was coming back from the flagpole down to the monument."

Is that correct?

A. Yes, sir.

Q. And question number two on that page 44, "And you heard that conversation in which the preacher was begging Walker to help them break this up and get the students to break it up and go back home?" And your answer: "Yes, sir, I heard that."

Is that correct?

A. Yes, sir.

[fol. 337] Q. Is that correct?

A. Yes, sir.

Q. Question: "And the preacher was telling him, didn't the preacher say to him, 'General, these boys will listen to you, please help us break this up and ask them to quit this and go home.'"

And your answer: "He did."

Is that correct?

A. Yes, sir.

Q. Question: "And Walker then said, 'I am not here to break it up, I didn't come here to break it up, I couldn't break it up if I wanted to!'"

And your answer: "That is right."

A. Yes, sir.

Q. Is that correct?

A. That is correct.

Q. Question: The last one on page 44, "In that speech, among other things, you heard him say, did you not, that 'you got a right to protest, protest all you want to, they may run out of gas, and help is on the way, thousands are coming,'"

And your answer: "Yes, sir."

Is that correct?

A. Correct.

Q. "When he said that, when he said, 'Protest all you [fol. 338] want to, you've got a right to protest, keep it up, they may run out of gas, help is coming, thousands are on their way,' that pleased the crowd, didn't it?"

And what did you say?

A. Well, yes, sir.

Q. Well, you answered: "I would say so."

And the next question: "And they cheered and clapped and cheered and hollered, didn't they?"

And your answer?

A. "Yes, sir."

Q. Now, the last question on page 45: "About the time he said that, when he said that, was that about the time the preacher came up to him again?"

And your answer: "The best I can remember, Mr. Smith, the preacher came up to him just as he got upon the stand and he never did quit following him, and when he got upon the stand, he reached up and caught him by the leg and begged him again."

Question: "He begged him to stop it, or asked him to stop it?"

Answer: "Yes, sir."

That was your answer?

A. Yes, sir.

Q. Did that happen?

A. Yes, sir.

[fol. 339] Q. Did that happen at the monument?

A. Up at the monument was the last time he caught his britches leg.

Mr. Watts: Judge, this is all repetition.

Mr. Gooch: Wait just a minute, it is not repetition. He has denied some of these statements on cross examination.

The Court: I know it, counsel. I will not sustain it.

Mr. Watts: All right.

By Mr. Gooch:

Q. "The preacher was still begging him, General Walker, to intercede with the students and ask them to stop their rioting and quit what they were doing and go back to their dormitories?"

And your answer: "That is right."

A. I am going to back up on that a little bit. The preacher didn't have but one word to say to him and I don't think General heard him then. The three men, that is when I got him.

Q. You say what you testified to over there in Mississippi is in error?

A. That is an error on that part, yes, sir.

Q. The next question—you answered, "That is right." And the next question, "That is what he was doing, wasn't it?"

[fol. 340] And you answered: "Yes, sir."

Do you want to back up on that?

A. Now, repeat that question.

Q. That alludes to the same question, that the preacher was asking Walker to stop the rioting. You said that was right. Now, do you say that is wrong?

A. He didn't talk to him while he was on the monument.

Q. All right. Question: "And General Walker then said—is that when he asked him what denomination he was?"

And your answer: "Now, the best I can recall it was just before he got on the stand, or as he was going to the monument, he turned and asked him 'What denomination are you, preacher?' He said, 'Episcopalian'. He turned around and looked at him and said, 'Well, you make me ashamed that I am an Episcopalian.'"

Question: "In fact, when the preacher was begging him to help or to try to get them to stop it, then did he use this language, 'Here is an Episcopalian preacher that makes me ashamed I am an Episcopalian'?"

And your answer: "Well, in those words or something like 'You make me ashamed I am an Episcopalian', I don't remember just exactly the words."

Is that correct?

[fol. 341] A. Yes, sir, that is correct.

Q. Now, on the top of page 47, Question: "Didn't you say on direct examination that everywhere Walker went the crowd followed him?"

And you answered: "Oh, yes, the crowd as well as myself. I watched him every move he made to see what was going to happen."

Did you make that answer?

A. I made that but I want to back up from that.

Q. You want to back up from that?

A. A full crowd never did follow him.

Q. All right. Did some follow him?

A. There were some in front and some behind him.

Q. Well, did some of them follow him?

A. Yes, sir.

Q. All right. Question: "People wanted to see what he was going to do and what he was going to say and when he went up toward the flagpole the first time, and before he made his speech, did the crowd go up along with him then?"

And you answered: "Oh, yes, sir." Did you make that statement?

A. I made that statement.

Q. Is it true?

A. It is not true that they all followed him.

[fol. 342] Q. Did some of them follow him?

A. Of course, some was behind him, yes, sir.

Q. All right. The next question: "It was quite a big crowd, wasn't it?"

And you answered: "Yes, sir."

Is that right?

A. It was a big crowd in area, yes, sir.

Q. Was a big crowd following him?

A. Not no big crowd was following him.

Q. All right. Was a little crowd following him?

A. Yes, sir, there was a small crowd come up.

Q. Question: "And then he got right up just about to the flagpole, didn't he?"

And your answer: "I don't recall just how far he got, he got up there until they charged the gas."

Is that correct?

A. That is correct.

Q. Question: "In other words, there was such a crowd following him when he went up toward the flagpole that first time that the Marshals turned a loose tear gas down there, didn't they?"

Answer: "Yes, sir, but there were students ahead of him, in other words, the students were all up in front of all of us when we went up there."

You made that answer?

[fol. 343] A. I did.

Q. Is it correct?

A. Correct.

Q. "But there was quite a crowd following him and they turned a loose the tear gas?"

And your answer: "Yes, sir."

Is that correct?

A. Correct.

Q. That is a correct answer?

A. Repeat that question one more time.

Q. "But there was quite a crowd following him and they turned a loose the tear gas?"

And you answered: "Yes, sir."

A. No, sir, I still say that would have to be wrong there. There wasn't no large crowd ever followed him.

Q. "Now, we will get back to the speech. After the preacher had begged him to try to help stop it and he said 'You make me ashamed I am an Episcopalian', then you say some of the students were saying, 'Barnett has sold us out, Barnett has sold us out.' And do you remember that when that happened, that General Walker said, 'You have been let down but not by Barnett,' and he leaned over and whispered to a young man standing there beside him and then

raised up and said, "The man who let you down or sold you [fol. 344] out is Birdsong'."

And your answer: "I do."

A. Yes, sir.

Q. Is that true?

A. That is true. I remember that. But I didn't put one statement there I should have put, and he raised back up and said, "I understand you have been sold out by Birdsong."

Q. Well, now, you were under oath when this deposition was taken in Mississippi.

A. Yes, sir.

Q. There was just a bunch of us there in the Courtroom, Mr. Watts, Fred Smith and myself? I believe that was all that was there on your deposition?

A. I think so, yes, sir.

Q. You were not excited, were you?

A. No, sir.

Q. "Do you remember he leaned over and whispered to this young fellow?"

And you answered: "I do."

A. I do.

Q. "Then he rose back up and said, 'The man who sold you out is Col. Birdsong,!' And you answered: 'Yes, sir.' Is that true?"

[fol. 345] A. Yes, sir. No, sir, he said, "I have been told Birdsong is the one that sold you out."

Q. You didn't say that when your deposition was taken?

A. No, sir. I done some thinking since then.

Q. Did you do any thinking before?

A. I done some, but I didn't know I was going to get in Court on this thing.

Q. You did know when your deposition was taken it might be used in Court, didn't you? Or did you know that?

A. I didn't think about it either way.

Q. "After this statement of the preacher it looked to you like the crowd was going to hurt the preacher, didn't it?"

And your answer: "I heard three men threaten him, or three people, I don't remember what age, but they were above students age."

A. Yes, sir.

Q. This is not read from the deposition, but you did take the preacher away from there?

A. Yes, sir, I did.

Q. As you testified?

A. Yes, sir.

Q. Now, you got him away from there to protect him, [fol. 346] didn't you?

A. Absolutely.

Q. Now, the one, two, three, fourth question on page 49, "Now, at the time that Walker was making his speech there was quite a crowd around the monument listening to him?"

And your answer: "Yes, sir."

Do you want to change that?

A. No, sir. No, sir, there was a crowd around.

Q. Quite a crowd?

A. They were parked in cars and they could hear him from the buildings on both sides.

Q. How many would you say was around him, aside from the deposition, when he made the speech?

A. Three or four hundred, somewhere in there.

Q. From the deposition again, the one, two, three, four, fifth, "Would you have any idea how many were circled around that monument listening?"

Answer: "There was 400 or 500 anyhow."

A. Well, there could have been that many, yes, sir.

Q. Question: "And a lot of them still had their bricks and their sticks and their bottles in their hands?"

Your answer: "Yes, sir."

A. Yes, sir.

[fol. 347] Q. Is that correct?

A. Yes, sir.

Q. Question: "And you could plainly see those things in their hands?"

Answer: "Yes, sir."

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. Question: "After he got through with the speech there he stepped down off the monument and started up that walk towards the Lyceum Building in—and the Marshals?"

And your answer: "Well, yes, sir, he walked that way."

Is that correct?

A. No, sir, I would like to change that a little bit. He didn't get directly off the monument and walk directly up that way. There was three or four or five minutes he milled around before he started that way.

Q. But he did walk up toward the flagpole?

A. Yes, sir, he did walk up toward the flagpole, yes, sir.

Q. All right. The next question: "And as he walked up that walk, just right after he finished his speech, wasn't it?"

And your answer: "Yes, sir."

[fol. 348] Do you want to change that?

A. Well, it was a few minutes after he made his speech.

Q. All right. Question: "When he stepped down, he did talk to two or three people for just a minute after he stepped down off of the monument, didn't he? And then they started up that way?"

Answer: "I don't recall him stopping and talking to no individuals, no, sir."

Did you make that statement?

A. I don't remember him talking to no particular one. People were still shaking hands with him, yes, sir.

Q. All right. "You just don't remember?"

Answer: "No, sir."

Question: "At numerous times that night people would come up and catch hold of Walker and say something to him?"

Answer: "They begged him to lead them several different times."

You made that statement?

A. Yes, sir.

Q. Was that correct?

A. That is correct.

Q. "And several times you saw people who would get ahold of him and attract his attention?"

[fol. 349] Answer: "Yes, sir."

Is that correct?

A. I don't remember—no, sir, they didn't get ahold of him. They shook hands with him.

Q. I am referring now to your questions and answers asked you in Oxford, Mississippi.

A. I didn't recall them getting ahold of him. They were shaking hands with him. As far as getting ahold of him, I didn't see nobody do that.

Q. You did say, didn't you, "I don't recall them catching ahold of him that way. They just walked up and would tell him 'General Walker, lead us. You can lead us and we could get something done.'"

A. Yes, I heard some of the students say, "If you will lead us we can get something done."

Q. All right, the second question on—

Mr. Watts: If Your Honor please, at this point I must object to reading this thing out of context.

Mr. Gooch: I will just read it all.

Mr. Watts: He gets in the middle of it, gets down to where the witness is going to testify and then he stops.

Mr. Gooch: We will offer it all.

The Court: Mr. Watts, on redirect examination you may offer what you think may be admitted, but I can't tell Mr. [fol. 350] Gooch how to cross examine.

Mr. Gooch: I will go ahead and read it all. I will put it in. I have no objections to it: "At numerous times that night . . ." the fourth question on page 50: "At numerous times that night people would come up and catch hold of Walker and say something to him?"

Answer: "They begged him to lead them several times."

To be absolutely correct, "And several times you saw people who would get ahold of him and attract his attention?"

Answer: "Yes, sir."

A. They would shake hands with him.

Q. Question: "Catch him by the arms and try to attract his attention and begging him to do this and to do that?"

Answer: "I don't recall them catching ahold of him that way, they just walked up and would tell him 'General Walker, lead us. You can lead us and we could get something done.'"

Is that what happened?

A. Yes, sir, that's right.

Q. Question: "You wouldn't say that they didn't catch ahold of him?"

[fol. 351] Answer: "It would be hard for me to say either way, because like I say, I couldn't be right beside him all the time. I was curious to see what was going on, myself."

Did you make that answer?

A. I did.

Q. Is it true?

A. It is true.

Q. "You just wouldn't know one way or the other?"

Answer: "That is right."

Now, did you make that statement?

A. Now, that is no way of knowing on which question you asked me that.

Q. Whether they caught ahold of him or not?

A. While I was in sight of him I didn't see nobody catch ahold of him.

Q. I asked you if you made that statement under oath?

A. Yes, sir.

Q. Question: "Just immediately then after he finished making his speech, he stepped down off the monument and did you hear him say anything as he stepped down?"

Answer: "No, all I heard him say, the main thing I heard him say that stuck with me, he said, 'Violence is not the answer,' he says, 'Cuba is yonderway.' He said, 'Protest [fol. 352] all you want to'."

Question: "That was his speech?"

Answer: "Yes, sir."

Is that true?

A. Yes, sir, that's right.

Q. Question: "I am talking about after the speech was over."

Answer: "No, I don't recall hearing none of his conversation then."

Is that right?

A. That's right.

Q. Question: "After his speech was over, he stepped down and started right up that walk toward the flagpole and the Lyceum Building?"

Answer: "He walked in that direction, yes, sir."

A. No, not immediately after he got off the thing.

Q. I am talking about did you make that statement?

A. Yes, sir.

Q. Now, do you want to change it?

A. He didn't go immediately, no, sir.

Q. All right. The answer you gave, "He walked in that direction, yes, sir," and the next question: "And the Marshals?" And you said, "Yes, sir."

Now, did he walk toward the Marshals?

[fol. 353] A. After he got through milling around he walked toward the flagpole.

Q. Question: "And this huge crowd followed him, didn't it?"

Answer: "They followed him and, of course, some of them run ahead of him and throwed things."

You made that statement when your deposition was taken, didn't you?

A. Yes, sir.

Q. Is it true?

A. It is not true it was a large crowd following him. I mean there was a large crowd in the area.

Q. Is it true some of them followed him and run up there and throwed things?

A. Some followed him.

Q. And they throwed things?

A. The ones in front did. He never got close enough for them to throw over him to the Lyceum Building?

Q. Check me and see if I am right. "They followed him and, of course, some of them run ahead of him and throwed things."

A. That is correct. The ones that run ahead.

Q. All right.

A. That's right.

Mr. Watts: That's right.

[fol. 354] Q. Question: "As they went on up there, as he started out, this crowd come in behind and alongside, and as they got on up there some of them got ahead and ran on up and through?"

Your answer: "Yes, sir."

Is that correct?

A. Yes, sir.

Q. "And they went on up and they went past the flagpole a little ways before the tear gas drove them back?"

Answer: "Yes, sir, they would get as close as they could."

Is that correct?

A. That is correct.

Q. Question: "And Walker went on past the flagpole?"

Answer: "Yes, sir."

Is that correct?

A. I made a mistake on a little bit of it. I don't believe he ever crossed the line on the flagpole.

Q. All right. "How far past the flagpole would you say Walker went before the tear gas drove him back?"

And you answered: "Oh, just a very few feet."

Now, is that true or untrue?

A. I don't believe he ever walked past the flagpole.

Q. You did say that on the deposition when it was taken?

[fol. 355] A. I did, yes, sir.

Q. "But he did go on and now at that time, if I understand, it is your estimate that this crowd that was follow-

ing him and out on each side of him, that stood out there, would be 1,000 or more people?"

And you answered, "I would say at least 1,000."

Did you make that statement?

A. I made that remark but I was still wrong about—in other words, I asked you all—You all asked me the question, I understood it wrong.

[fol. 356] Now I'm talking about the thousand people was in the whole area. In other words, I was—somebody asked to mark on the map where it was and I did.

Q. Well, now do you think that question is unfair?

A. I just answered it wrong. I misunderstood the exact meaning of it.

Q. Misunderstood it?

A. In other words, there was a thousand people in the area.

Q. "And when they got up there in the vicinity of the flagpole and Walker passed the flagpole and this crowd all spread out there, those that could threw at the Marshals, didn't they?"

And you said, "Oh, yes, sir."

Is that right?

A. The ones that could throw at them did.

Q. "They threw everything they could at the Marshals, and the tear gas got so heavy that they then fell back?"

And you answered, "Oh, yes, sir, but the wind had changed and blowed the gas back toward the Marshals. You could get a lot closer then than you could at one time."

Did you make that answer?

A. I made that statement.

Q. Is that true?

A. Well, now that's not involving Walker going past [fol. 357] the flagpole.

Q. Oh, yes, it is.

A. No, sir, he never got past the flagpole.

Q. All right. Now, you say that he didn't, but you did say that in Oxford, didn't you?

Mr. Address: Now, Judge, he's arguing with the witness.

The Court: Just a minute.

Mr. Gooch: Look at this thing and you will see it.

The Court: It will be up to the jury to determine the effect of the answer.

Mr. Address: That's right.

The Witness: I done a lot of thinking after I give that and studied that thing out.

By Mr. Gooch:

Q. All right. "Question: And some of those that got up to where they could throw, when the tear gas was fired, some of them ran back and others walked back, is that right?"

Answer, "Some of the kids would run, yes, sir." Did you make that statement?

A. Yes, sir.

Q. Is that true?

A. That's true.

Q. "Some of them were running?"

Answer, "Yes, sir." Is that true?

[fol. 358] A. Yes, sir.

Q. "After that happened and at that time, when that was going on, you could still see the blazes and smoke from some of these cars that were burning?"

Answer, "They were burning them all night." Is that correct?

A. Correct.

Q. "They were burning them all time and that was going on, and at that time there was whooping and yelling and cursing and all that sort of thing going on?"

And you answered, "Yes, sir." Is that correct?

A. Correct.

Q. "In other words, just as you described in a moment ago, it was a violent mob?"

You answered, "Yes, sir."?

A. Yes, sir.

Q. The next to the last question on Page 53: "And you would say that this one thousand people that surged up there at the time Walker walked up past the flagpole, that was a violent mob, wasn't it?"

And you answered, "Yes, sir." Is that correct?

A. No, sir, that's not correct. I give it but I—

Q. Wait a minute. Did you make that answer?

A. I made the statement, yes, sir.

Q. Now you say that isn't correct?

[fol. 359] A. That's right, I misunderstood the question.

Q. You misunderstood the question?

A. That's right.

Q. All right. "Question: When the tear gas was fired and got heavy, and you fell back, where did you go then?"

Answer, "I came back down next to the monument.

"Question: And what did you do then?"

Answer, "Just prowled around."

A. Yes, sir.

Q. "Question: After that, now, after that charge when Walker went up past the flagpole with this violent mob behind him and alongside him and they threw their missiles and you fell back, that wasn't the end of what happened there that night, they continued these waves of surging up there at the Marshals and throwing their missiles?"

Answer, "They throwed things all night, yes, sir, until 5:00 o'clock." Is that right?

A. All except him going past the flagpole.

Q. "Question: That continued to go on until 5:00 o'clock the next morning?"

You answered, "Yes, sir," is that right?

A. Correct.

Q. "And the crowd remained large out there, didn't it?"

And the answer, "It got larger, yes, sir."

A. Right.

[fol. 360] Q. "Question: Would there be any way that you could estimate after Walker went up past the flagpole with this violent mob alongside and behind him, would you

have any way to estimate how many more charges or waves that mob made that night towards the Marshals?"

Answer, "No, sir, I would not."

Is that correct?

A. That's correct.

Q. "It was numerous though?"

Answer, "Yes, sir, it was several of them."

"And they didn't lessen in intensity, did they, they still stayed violent and aroused, that is right, isn't it?" And you answered, "Right."?

A. Yes, sir.

Q. Let me ask you this question: Do you remember, in connection with the protest that General Walker spoke of, that in connection with it, that he hollered, "Good. Good. Keep it up." Do you remember him making a statement like that?

A. Yes, sir; yes, sir, I remember it.

Q. Well, tell us what General Walker said.

A. Well, in reference to the protest, he said, "Good. Good. Keep it up."

Q. All right. On Page 56: "Do you remember a young man coming up to him and asking, 'General, what can we [fol. 361] do to counteract this tear gas?'" Do you remember that question being asked the General?

A. I don't remember being asked directly, the General. I remember somebody coming up and asking—he didn't ask no individual, how—what can you do to counteract tear gas?

Q. All right. Look on Page 56, at the question: "Do you remember a young man coming up to him and asking, 'General, what can we do to counteract this tear gas?'" Your answer, "I remember some of them asking him something or what they could do to smother the tear gas out, yes, sir."

Do you remember that now? You made that statement, didn't you?

A. Well, I must have.

Q. "Question: And what did he say?"

"I remember hearing him say that sand or water would do it." You testified to that in Oxford, didn't you?

A. I believe I did. But I remember hearing somebody say that.

Q. "Question: That sand or water would do it?"

Answer, "Yes, sir.

"Question: And do you remember him saying, 'But where can you get sand?', or 'Have you got any sand?'"

And you answered, "No, I don't remember that."

And you didn't remember him making that last one, is that right?

[fol. 362] A. No, sir, I don't.

Q. But you do remember him being asked what would counteract the gas, do you not?

A. I don't remember asking him the question. I remember somebody asking, "How can you put out tear gas."

Q. Well, you don't deny that you—

A. No.

Q. —that you say here that you heard them ask him, do you?

A. Well, I can't deny it, no, sir.

Q. All right, sir. Next question, "You do remember him, though, when they asked him how to counteract it, he said sand or water will do it?"

And you answered, "Yes, sir." Did you make that statement?

A. I made that statement.

Q. "Did you see them making their Molotov cocktails that night, putting gasoline in bottles and setting a wick afire?"

"Yes, sir, I seen that but I didn't know what it was at that time. That is the first time I had ever heard of that.

"Question: Do you remember seeing General Walker standing over in the vicinity where they were making those things and lighting them and blowing them up?"

[fol. 363] Answer, "I remember seeing General Walker when they were throwing them, yes, sir." Did you make that statement?

A. Yeah, I remember seeing him, yes, sir.

Q. "And he wasn't very far from where they were doing that, was he?"

Answer, "I don't recall just how far. I remember him standing in the crowd." Is that correct?

A. There was a crowd around there, yes, sir.

Q. All right, on Page 58, recross examination, by Mr. Smith, addressed to you, Mr. Witt:

"But he did go after his speech up past the flagpole with at least 1,000 members of a violent mob behind him or alongside him?" And you answered, "Yes, sir."

A. I answered, "Yes, sir," but I misunderstood the question. I don't mean there was a thousand people in front of him. There was a thousand people in the area and some of you all should have a map or something where I marked a circle on that after it was over.

Q. "Question: And that did happen?"

Answer, "Yes, sir"?

A. Yes, sir.

Q. Did you make that statement?

A. I made that statement.

Q. You say now that's not right?

[fol. 364] A. There never was a thousand people following him.

Q. "Question: And they were armed with sticks and stones and bricks and they threw their bricks and missiles when they got up close enough to the Marshals?"

Answer, "The people did, I didn't see General Walker with nothing in his hands."

A. That's correct.

Q. Now you have said in answer to some of these questions here, Mr. Witt, that you didn't understand the questions when they were submitted to you, is that correct?

A. That's correct. Sometimes you would ask five questions in one thing for one answer and that's a little hard to give it like you want it.

Q. That's conceivable. Now in connection with your thinking about this matter, prior to the time you gave your

deposition in Oxford, Mississippi, on March the 13th, 1964, had you done any thinking about the incidents on the campus of Ole Miss on September the 30th, 1962?

A. Repeat that one more time, Mr. Gooch, please, sir.

Q. Prior to the time you gave your deposition, had you tried to recollect in your own mind some of the things that went on or most of the things that went on, on the campus at Oxford on the night of September 30th, 1962?

A. I never did give it too much thought until I gave you all that statement there.

[fol. 365] Q. All right. Would you recognize your signature?

A. Yes, sir, I sure would.

Q. I hand you what purports to be a statement—

A. Yes, sir.

Q. —which purports to bear your signature on each page?

A. Yes, sir.

Q. Is that your signature on each page?

A. That's my signature and that's my statement.

Q. And is this the statement?

A. Yes, sir.

Q. Did you make this statement?

A. I did.

Q. Did you, in making this statement, tell the truth as you knew it at that time?

A. The best I knew how.

Q. Do you think at the time you made this statement that the matters that you put in that statement were true to the best of your knowledge and belief?

A. Well, I told it the best I could think it right then.

Mr. Gooch: We would like to offer in evidence, if the Court please, the statement of this witness, for impeachment purposes.

The Court: That's Defendant's Exhibit 1.

[fol. 366] Mr. Gooch: Yes, sir.

(Defendant's Exhibit No. 1, was marked for identification.)

Mr. Watts: Is there a copy anywhere?

Mr. Gooch: No, sir. It's the only one I have.

Mr. Address: We would like to see it.

The Witness: I have a copy.

By Mr. Gooch:

Q. Do you have a copy?

A. I sure do.

Q. Would you furnish that to Mr. Watts?

The Court: Do you have it with you?

The Witness: No, sir, I don't have it with me.

The Court: Let him see that copy you are offering so he can read it now.

Mr. Gooch: What copy?

The Court: I mean the original so he can read it.

By Mr. Gooch:

Q. You were furnished with a copy of that statement?

A. Yes, sir. I asked for one.

Mr. Address: Judge, this is all repetition, with the exception of one paragraph here which covers a matter which is not in issue, not relevant to anything in issue. Outside of that, everything is purely repetitious.

The Court: You are offering it for impeachment purposes only?

Mr. Gooch: That's correct.

Mr. Address: Take that paragraph out and we have not got any objections to it.

Mr. Gooch: I can't take anything out of a man's statement. He made the statement or he didn't. He said he made the statement. I'm not going to take anything out of it.

.(Conference at the bench.)

Mr. Address: Other than that, Judge, it's purely duplicative of the deposition.

The Court: I will admit all of the statement except the second paragraph on Page 4. The paragraph actually consists of only one sentence.

Mr. Address: I wonder, Judge, if you would take a pencil and mark that.

The Court: We just done it.

Mr. Address: So there won't be any mistakes made about it, put a circle around it.

The Court: There won't be any mistakes made about it, Counsel, I will tell you that.

[fol. 368] Q. You did say you did receive a copy of this statement?

A. Yes, sir.

Q. Have you at any time heretofore disavowed this statement to anybody?

A. No. I have let people read it. I have read it to people.

DEFENDANT'S EXHIBIT 1

Mr. Gooch: "Statement of Talmadge Witt of Pontotoc, Mississippi."

"I am Talmadge Witt, 42 years old, I live in Pontotoc County, Mississippi, and I am a deputy sheriff under Sheriff John H. Moore of that county, and have been serving as such deputy since March 1, 1960. I was acting as such deputy on September 30, 1962, and was called by Sheriff Faulkner of Union County to come to Oxford, Mississippi, getting that call about 3 p. m. on the 30th day of September, 1962. Shortly after receiving this call I went to Oxford with Cecil Payne, another deputy from Pontotoc County. We went directly to the campus of the University of Mississippi and arrived there sometime around 4:30 o'clock p. m.

When I got on the campus of the University, the United States Marshals were already around the Lyceum Building, that is, a building with big white columns in front, facing in an easterly direction. There was a paved roadway in [fol. 369] front of the building, and the marshals were lined up along the side of the roadway next to the building;

on the other side of the roadway, and all out in front of the building, were some men and boys and girls, with the roadway between them and the marshals. The crowd out in front of the building was not as big then as it was later, but it gradually grew larger from then on. When I got to this place there was a number of highway patrolmen and other officers in the roadway, between the marshals and the crowd, keeping the crowd back from the marshals, and I joined them and helped to do this.

The crowd grew larger as time passed, and the lights were turned on, on the campus. At this time there was not as much disorder as there was later, there was some loud talk, and some of those in the crowd would throw or flip lighted cigarettes and matches towards the marshals and on the cloth top of some of the army trucks which were there. It is difficult to remember the exact time that events happened, but after I had been there about an hour and a half to two hours, and at a time when I was standing across the road in front of said building, the marshals fired the first blasts of tear gas and the crowd scattered and ran away, and I, of course, went some distance away, also, but still stayed in the area down in front of the Lyceum Building. For some time, after the first tear gas was fired, the [fol. 370] crowd simply milled around, many of them armed themselves with bricks or pieces of broken bricks, rocks, sticks, coca cola bottles and anything that they could get their hands on, and when they could get close enough, they would throw these things at and towards the marshals, and the tear gas would drive them back. The crowd did not seem to have any definite leadership at that time, and simply milled around, hollering, yelling, shouting and talking among themselves.

Somewhere along during this time it seemed that all of the State Highway Patrolmen left the campus, as did also some of the law officers, that is, sheriffs and deputy sheriffs, but I stayed on to render any assistance that I could. Sometime around 8 o'clock p. m., or a little later, I began to hear different ones say, "here comes General Walker." I did not

know him prior to that time, and when I first saw him he was walking towards a Confederate monument which was several hundred yards in an easterly direction from the marshals at the Lyceum Building. People in the crowd around General Walker began to say different things. Several of them began to say, "we have got a leader now," or "here is our leader." I had on my deputy sheriff's badge, and shortly after General Walker arrived in the territory of the Confederate monument, he came up to me, shook hands and said: "I would like for you to deputize [fol. 371] me to help in this matter." I told him that I did not have authority to do that, that I was a deputy sheriff and was not a deputy in that county.

I was close to General Walker all of the time, from the time when he first arrived, until a considerable time thereafter.

Some few minutes after this, various people were asking General Walker to lead them and to make them a speech and tell them what to do, and after awhile he got up and on the side of the Confederate monument and made a talk. I cannot recall all the things he said, but I do remember his saying these things: "Violence is not the answer, Cuba is that way," and pointed south. He said: "Protest, protest, all you want to, you have a right to protest, and they may run out of gas." He said: "Help is on the way, thousands are coming."

A preacher had been following General Walker around asking him not to lead the crowd, but to get them to stop what they were doing. This preacher said to Walker: "They will listen to you and do anything you say, please get them to stop and go home," and Walker said: "I am here to watch what happens, I am not interested in stopping it," and then Walker asked the preacher what denomination he was, and the preacher replied "Episcopalian," and Walker said: "You make me ashamed that I am an Episcopalian." About this time I heard some serious threats made against the preacher by people in the crowd, after Walker said what he did to him, and I

was afraid the preacher was going to be hurt, so I took him by the arm and pulled him and carried him out of the crowd. Two men came up to the edge of the crowd and stated that they were friends of the preacher, and asked me what I was doing with him. I told them that someone was going to hurt him if he did not leave, and I suppose they left with him, as I never saw them any more.

After some of the crowd had asked Walker if he would lead them, he stepped down from the side of the monument and said: "Keep protesting and see if we can get closer." He then started towards the marshals and the crowd was armed with sticks, rocks, coca cola bottles and other things, as I have heretofore stated. They seemed to have anything that they could get their hands on, and when they got close enough, they would throw towards the marshals. When the front of this crowd, which General Walker was with, got in about 200 feet of the marshals, they fired another blast of tear gas, and the crowd ran back, with General Walker with them. At all times during this, I was near or in sight of General Walker and stayed in sight of him until about 5 a. m. the next morning.

On a number of occasions Walker would walk towards the marshals, or in that general direction, and whenever he [fol. 373] did, a large crowd would fall in behind and follow him. In fact, wherever Walker went, the crowd followed. During the time after the first march towards the marshals with Walker in or near the lead, I heard different statements, many of which I cannot remember, but at one time, in talking with a group about the protest they were making, he said, "good, good, keep it up." I heard people asking how to snuff out or counteract the tear gas, and Walker told them to use water, and right after that they got a fire truck and hose and began to try to use that to stop the gas. I saw a group making Molotov cocktails. They were taking coca cola bottles and putting gasoline in them and putting some kind of wick in them, setting the wicks afire, and they would then throw this towards the marshals. I did not hear Walker say anything about the

Molotov cocktails, but I did see him in the vicinity of where they were being made. During all of this time, when Walker was there, and at the time when he was telling them to continue to protest, the men and boys in the crowd were armed as I stated before, they were throwing the Molotov cocktails, they were setting automobiles afire, and I personally counted sixteen automobiles that were burned. There was a new building going up near the scene of the rioting, and the students and others would get bricks over there, I saw them roll wheelbarrows up loaded with bricks, [fol. 374] and they would break them up and take them in their arms when they went towards the marshals. Many of the lights were broken out around the campus, especially around the flagpole that was between the Confederate monument and the Lyceum Building.

In reading over the foregoing, I notice it appears that what the preacher first said to Walker about stopping the rioting, was said after he got on the monument, and this is not correct. It was before Walker got upon the monument that the preacher was urging him to try to stop the rioting and get them to go home, and it was before he got up on the monument that Walker replied, "I am here to watch what happens—I am not interested in stopping it." It was after he got on the monument or about the time he got on the monument to make the speech that he asked the preacher what denomination he was, and the preacher replied "an Episcopalian." I simply wanted to add this to my statement in order to clear it up.

This the 25th day of November, 1963."

[fol. 375] That is Defendant's Exhibit 1. That is all with this witness.

Mr. Address: Just a minute, Mr. Witt.

Redirect examination.

By Mr. Address:

Q. Mr. Witt, have you been a witness before in cases some time?

A. Not like this, no, sir.

Q. How many times have you been a witness?

A. Oh, in JP Court, six or eight times, something like that.

Q. How old a man are you, Mr. Witt?

A. Forty-three.

Mr. Gooch: How old?

A. Forty-three.

By Mr. Address:

Q. Mr. Witt, this Defendant's Exhibit 1, what lawyer prepared that for your signature?

A. Fred Smith.

Q. Fred Smith is what, one of the lawyers in Mississippi for the Associated Press?

A. He is a lawyer. When I gave it to him I didn't even know what it was all about.

Q. Is he one of the lawyers for the Associated Press over in Mississippi?

A. He is the man that cross-examined me at Oxford, too. [fol. 376] Q. Now did you ever write this out in long-hand?

A. No, sir. I have a copy just like that.

Q. But you didn't write this out in longhand and then have him type it up?

A. No, sir.

Q. How long did you talk to Mr. Smith before he fixed this thing up for you?

A. He come out to the courthouse at Pontotoc one Sunday afternoon. We talked there two or three hours.

Q. Did he make any notes?

A. At that time he did, yes, sir.

Q. And then he is the one that fixed this up?

A. Oh, he typed that up in his office on Monday. He wrote it in shorthand Saturday afternoon.

Q. Is this his language or yours?

A. Yes.

Q. Is it his language or yours?

A. Well, he asked the questions.

Q. Uh-huh. Now, of course, this isn't sworn to, is it?

A. No, sir.

Q. Had you ever had your deposition taken before it was taken in this case?

A. No, sir.

Q. That is the first experience you had with a deposition?
[fol. 377] A. Yes, sir.

Q. Now when Mr. Smith came up there and talked to you about giving this statement did he tell you he intended to use that in evidence?

A. I don't recall nothing about him saying nothing about what he wanted it for. Maybe he did. In fact, I wasn't too interested in that thing at that time; didn't know anything about it.

Q. Let's see. Is Mr. Smith in the courtroom this afternoon?

Mr. Gooch: No.

Q. Was any other lawyer there with him?

A. Probably his nephew, I believe, was in one of the outer offices when he was there.

Q. Now did you have a lawyer when he was questioning you?

A. No, sir, I didn't need one.

Q. Did you have a lawyer when he presented this statement to you for your signature?

A. No, sir.

Q. Did you submit it to your lawyer before you signed it?

A. No, sir.

Q. Now did you know when this deposition of yours was being taken that it was being taken under an agreement [fol. 378] that nobody would make objections to any kind of questions that were being asked at that time, except as to form, that the objections were reserved until the time of trial?

A. Wait a minute. Start over one more time.

Q. Now at the time your deposition was being taken did you know that all of the objections that either side had to the questions were going to be reserved to the time of trial and therefore, there wouldn't be any objections to any questions being asked you?

A. The idea of that—that was all my part.

Q. Let's see. They waived the signature on these depositions, didn't they? You didn't actually sign the depositions?

A. I didn't sign none of those, no, sir.

Q. How long after—did you ever see this deposition after it was taken?

A. Seems like I looked at it when the boys was with me the other night. I looked at it for a few minutes.

Q. You didn't check it over to refresh your mind to see if it was exactly what you had in mind?

A. You—no, sir.

Q. Now at the time your deposition was taken, you were asked, were you not, what area would encircle that group of 1,000 people and at that time you did draw a circle, a perimeter there, after saying it was, oh, on back in the [fol. 379] surrounding area?

A. Yes, sir.

Mr. Gooch: If the Court please, I object to this part of the examination. He either made the statement or he didn't. He testified before when I asked him about it that it was true.

The Court: I believe he is asking him now whether he drew on the exhibit.

Mr. Address: Yes, sir.

A. Yes, sir, I drew one. Somebody gave me a map and I drew a circle where I estimated the thousand people to be.

Q. We don't want to mark this map up, but how about you coming over here with the ruler and standing here where we can all see it, and kind of circle the area where you say that one thousand people were.

A. This (indicating) is University?

Q. This is University Avenue.

A. It was over—

Q. —wait a minute. Here is University Avenue, University circle, here is the monument, here is the flagpole, here is the Lyceum and here is the YMCA, here is this new Science Hall (indicating).

What is the area you had in mind, as best you can remember, that you drew a circle on that smaller map that [fol. 380] you had at that time, that had the 1,000 people?

A. It was completely around this whole thing. There were people in cars all up and down this street here.

Q. Now when you said, "completely around this whole thing," you made a circle with the pointer that went all the way around the Lyceum Building on the far west, and covered the complete circle and came back kind of out onto University Avenue, didn't you?

A. Yes, sir.

Q. Is that what you meant?

A. That is what I mean. Of course behind were people and a lot of times you wouldn't see what was going on, but up here, way around in here (indicating).

[fol. 381] Q. When you say, "up here," you are talking about—

A. Behind the building.

Q. —Peabody Hall and the Fine Arts Center and the approach to the Fulton Chapel?

A. You could see out these streets but behind the Lyceum Building, you couldn't see.

Q. All right. Were some of these thousand people that you are talking about that were surging around the campus, were they up there by Peabody, by Peabody and by the Fine Arts Center and—

A. Yes, sir.

Q. —and were some of them down here as you mark here, down by Carrier Hall?

A. They was all around there.

Q. Would you say all around the open spaces, around the University circle?

A. Everywhere they could get, they was there.

Q. And down how far on University Avenue?

A. Oh, down here—see, the street angles off right here.

Q. Uh-huh.

A. They was down right to here (indicating).

Q. They were down here at what's marked the Old Post Office Building, right?

A. Yes.

[fol. 382] Q. That's that first street off of University Avenue?

A. That's right.

Q. East of the circle?

A. That's right.

Q. So that—let's see, from the library place back here on the far west behind the Lyceum, down to this street off of University Boulevard, on this scale it shows to be about 1200 feet, doesn't it?

A. I would guess that's about right.

Q. And across—have I got this pointer now in the area that covers the across?

A. Yes, these buildings, and these streets, see, goes out like this. You could see people back in this area here (indicating).

Q. So that if we draw a line north and south through the flagpole, in that circular area, have I got the distance marked right here?

A. Yes, sir.

Q. All right, sir. And that shows over here as being 800 feet, doesn't it?

A. That's right.

Q. So you are talking about a sort of an oval area that's 1200 feet long and 800 feet wide?

A. That's right.

[fol. 383] Q. That is where the thousand people that we are talking about were located in?

A. Yes, sir.

Q. Now, Sheriff, were you leading this crowd in any of the—

A. No, sir.

Q. —activities there?

A. No, sir, I was not.

Q. During these activities, was General Walker doing anything different than you were doing?

A. No, sir.

Mr. Gooch: We object to that as a conclusion on the part of this witness and draws a comparison between two people.

The Court: Yes, sustained.

By Mr. Address:

Q. So far as these acts of violence that you were talking about, Molotov cocktails, throwing things at the Marshals, and so on, will you state whether or not General Walker did any of those things?

A. No, sir, he did not.

Mr. Address: That's all.

Mr. Gooch: Stand aside.

The Court: We will excuse this witness if you don't need him any more.

Mr. Watts: Yes, sir.

[fol. 384] Mr. Address: That will be all right.

The Court: You are excused.

Ladies and Gentlemen, we will recess until 9:00 o'clock the next morning. At that time, be in the jury room and we will call you out from there.

(Thereupon, at 5:00 o'clock, p.m., the hearing was adjourned until Wednesday, June 10, 1964, at 9:00 o'clock, a.m.)

[fol. 387]

PROCEEDINGS

(The following proceedings were had outside of the presence and hearing of the Jury.)

The Court: Ladies and Gentlemen, since we have a rather large audience I am going to adopt the practice of having

counsel and the audience remain in their seats at each recess until the Jury has left the Courtroom. I am going to further instruct the audience not to discuss the case either in the halls or the restrooms or anywhere else when a Juror may be present. You, of course, have a right to discuss the case among yourselves, but make very certain you do not discuss it in the presence of any Juror. That would be misconduct on your part.

All right, bring in the Jury.

(Jury in; the following proceedings were had within the presence and hearing of the Jury.)

The Court: Good morning, Ladies and Gentlemen. All right, Mr. Watts.

ZEB JONES, called as a witness by the Plaintiff, having been first duly sworn, testified as follows, to-wit:

[fol. 388] Direct examination.

By Mr. Watts:

Q. Your name, please?

A. Zeb Jones.

Q. How do you spell that?

A. Z-e-b (spelling).

Q. Where do you live, Mr. Jones?

A. Jackson, Mississippi.

Q. What is your business?

A. I practice law there.

Q. For how long?

A. Well, about three months; just getting started.

Q. Are you a graduate of the Ole Miss Law School?

A. No, sir, the Jackson School of Law, Jackson.

Q. Did you go to Ole Miss at one time?

A. Yes, sir, I did.

Q. And when did you graduate from Ole Miss?

A. 1957.

Q. Were you on the campus the night of September 30, 1962?

A. Yes, I was.

Q. What was the occasion for your being on campus?

A. Two of my neighbors, they have students up at Ole Miss, and I drove them up there that night. I knew there would be some excitement also. I had two purposes in mind.

[fol. 389] Q. And whose car did you go up there in?

A. In mine.

Q. Who was with you?

A. Two students, Taylor Robertson and Ben Wells; and two older men friends and myself.

Q. Who were the older men friends?

A. Al Busby and Jack Robertson.

Q. What time did you leave Jackson?

A. About a quarter to five that afternoon, Sunday afternoon.

Q. What kind of a car were you driving?

A. '61 Ford.

Q. Yours?

A. Yes, sir.

Q. What time did you arrive on campus at Oxford?

A. About 9:30 that night.

Q. Will you tell the Jury, please, sir, in your own words from the time you arrived in the outskirts of Oxford what you saw and heard?

A. Well, we arrived there on the campus about 9:30. I parked my automobile—could I use the diagram to show where I parked my car?

Q. Sure, take the pointer there where you can identify places.

A. We came on the highway about here, along here, came [fol. 390] in along the campus. This is University Avenue right here, over toward the middle of the campus here, right along here, and I parked my automobile right along here, I believe, the first road in here. We got out of my

car and walked up toward this area here known as the Grove in here (indicating map).

Q. Now, have another look at that so-called Grove and see if it is the Grove or the Circle?

A. Well, the Circle.

Q. Now, do you see another item up there, another area that is designated Grove, back a little; back a little and above, toward you and up?

A. That's right. I am mistaken. I am mistaken.

Q. All right.

A. This was the Circle we went into and the silos (phonetic) more or less broke up as we got along here, a large crowd, and I just kind of drifted off in this area along in here sort of south.

Q. Identify further that installation at the east end of the Circle.

A. This is the monument right here, the Confederate monument. A lot of students were standing around this area, and they were throwing rocks and so forth, a lot of hollering and yelling.

Q. Were the students in that area throwing the rocks? [fol. 391] A. No, sir, they were a little bit closer up to this area. The Marshals—well, the Marshal—

Q. Get on over where you can see it.

A. This (indicating) is the Lyceum Building which is the Administration Building, and the Marshals were more or less lined up in this vicinity in front of the Lyceum Building, and the students would run up from this area here and throw rocks. Everybody was pretty well scattered out all over this whole area in here (indicating chart).

Q. Okay, you may take your seat. How long did you stay there?

A. Until around 1:30 or 2:00 the next morning.

Q. All right, go on and continue with your outline of events. Tell the Jury what you saw and what occurred?

A. The Marshals were shooting tear gas and, well, as we first arrived on the campus we heard a lot of shooting.

I thought it was firearms being shot. Later we learned it was tear gas. And there was a lot of tear gas in the area, just kind of hanging in the air, and it would burn your eyes and so forth, and students were just running around more or less in just disorganized confusion, and that was about it.

Q. Did you encounter General Walker while you were there?

A. I had been there, I guess, fifteen or twenty minutes [fol. 392] when I saw General Walker.

Q. Tell the Jury about it.

A. I was on more or less the south side of the Circle. I had been there fifteen or twenty minutes, possibly around a quarter to 10:00 that night, and somebody said, "There is General Walker over there," more or less by the statue. I walked over to General Walker and shook hands with him and he was just more or less standing there watching and observing the crowd and doing nothing, just standing there.

Q. How long did you observe him there—did you talk to him?

A. Yes, sir, I did, I introduced myself to him and he said he was very glad to meet me, and that was about the extent of it.

Q. How long did you stay in the immediate vicinity of General Walker?

A. I guess ten or fifteen minutes.

Q. Where did you go from there?

A. I believe I probably walked up toward the—north of the sidewalk, just walking back and forth in the Circle, back and forth from one side to the other.

Q. Did you see anything further from that time on of any significance?

A. Well, there was just a lot of kids. I saw several different college jackets of four or five junior colleges in [fol. 393] the area; a lot of boys running around throwing rocks, hollering, yelling, and just more or less a lot of confusion going on.

Mr. Watts: That is all.

Cross examination.

By Mr. Gooch:

Q. Mr. Jones, had you heard of General Walker before you got up there that night?

A. Yes, sir, I had.

Q. Did you consider him to be a public figure?

A. Yes, sir, he was more or less pretty well known.

Q. Had you heard some of his talks or speeches, or had you—

A. Yes, sir, I had. I heard him speak in Jackson about the—oh, about a year prior to that, I guess.

Q. You did consider him a public figure, did you not?

A. Yes, sir. I don't know what you mean by public figure. He was a well-known celebrity. More or less—

Mr. Gooch: Thank you, that is all.

Mr. Watts: That is all, Mr. Jones, thank you. Bring Mr. Leman in, please.

The Court: I will excuse this witness.

Mr. Watts: May this witness be excused?

The Court: Yes, sir.

[fol. 394] LOUIS LEMAN, called as a witness by the Plaintiff, having been first duly sworn, testified as follows, to-wit:

Direct examination.

By Mr. Watts:

Q. Your name, please.

A. Louis Leman.

Q. I just heard one of my co-counsel say you are nervous, Mr. Leman. Are you?

A. Yes, sir.

Q. Where do you live?

A. Crosby, Texas.

Q. Have you ever been on the witness stand before?

A. No, sir, never have.

Q. How old are you?

A. Twenty-five.

Q. Where were you raised?

A. Crosby, Texas.

Q. Where is Crosby, Texas?

A. About thirty miles the other—east of Houston.

Q. How long have you lived in that area?

A. Well, sir, I lived there right after I was born until the War and then we lived at Houston—Houston after the War, and then moved back to Crosby, and lived there ever [fol. 395] since.

[fol. 396] Q. Where were you during wartime?

A. Boston—Milton, Massachusetts, near Boston.

Q. What were you doing there?

A. Father was in the Navy.

Q. In the Navy?

A. Yes, sir.

Q. I thought he was in the Army?

A. No, he was in the Navy.

Q. Where did you go after you left Boston?

A. Went to Houston, Texas.

Q. And did you go to high school in Houston, Texas?

A. Yes, sir, St. Thomas High School.

Q. St. Thomas High School?

A. That's correct, yes, sir.

Q. Now where is St. Thomas High School in Houston?

A. It's on the Memorial Drive on the west side of Houston.

Q. Did you graduate from St. Thomas High School in Houston?

A. Yes, sir.

Q. When?

A. In 1956.

*Q. Where did you go from high school? Did you go off to school?

A. Went to the University of Texas.

[fol. 397] Q. At Austin?

A. Yes, sir.

Q. In what year?

A. In 1956, I started.

Q. Did they play Oklahoma that year?

A. Yes.

Q. Strike that. Mr. Leman, did you—what course did you take?

A. Mechanical Engineering.

Q. Mechanical Engineering?

A. Yes, sir.

Q. Did you graduate?

A. Yes, sir.

Q. After how many years?

A. Four and a half years.

Q. With what course?

A. Bachelor of Science Degree in Mechanical Engineering.

Q. And did you then practice that profession?

A. Yes, sir.

Q. For whom did you work?

A. Southwest Oil Field Products.

Q. Where is the Southwest Oil Field Products located?

A. The plant is in Houston, Texas.

Q. How did you happen to go to work for Southwest Oil [fol. 398] Field Products?

A. Well, I planned on it and my father was—it was his company and I had planned on going to work.

Q. What was their general business?

A. Manufacturing oil field equipment.

Q. Where did they put you to work?

A. Mississippi.

Q. Did you live for a while in Mississippi?

A. Yes, sir.

Q. What place?

A. Brookhaven, Mississippi.

Q. Now where is Brookhaven?

A. South of Jackson about 50 miles, I would say.

Q. What size town is it?

A. Oh, 10, fifteen thousand. Maybe a little more, a little less.

Q. Did you make friends and acquaintances in Texas—as you were in Mississippi?

A. Yes, sir, sure did.

Q. Mr. Leman, do you know General Walker?

A. Yes, sir, I do.

Q. What is the occasion of your becoming acquainted with General Walker? He's much older than you are.

A. Well, sir, when he was running for Governor, I found out that, from my father, that his mother, that lady right [fol. 399] there (indicating), and my grandmother were raised together in San Antonio. They went to school together and stayed in the—well, in the same classroom together.

And I was interested in meeting him and so on my vacation, I met him in Baytown, and met him, introduced myself.

Q. Is Baytown close to Houston?

A. It's close to Crosby, sir, about 15 miles, I would say.

Q. You say that was during the political campaign?

A. Yes, sir, that's when he was running for Governor, that's correct.

Q. And tell us about your meeting General Walker.

A. Well, sir, I met him and found out basically that he felt the same way politically that I did, that something was wrong with the country, that—

Q. Just in general, you had a common interest?

A. That's correct.

Q. And did you then become fairly well acquainted with him during the course of that political campaign?

A. Yes, sir, I did.

Q. And did you help him and work for him in the campaign?

A. Yes, sir, I did.

Q. Did you see General Walker any more from the end of that campaign—well, strike that question. Glad I didn't ask [fol. 400] it.

Did you see him any more from the end of that campaign until the Mississippi incident?

A. Yes, sir, as I remember, right after the campaign, he was down in Houston; he came out to dinner, I remember that, yes, sir.

Q. How soon after the campaign?

A. Within a week, I would say, sir.

Q. He came out to dinner with your folks, was it?

A. Yes, sir.

Q. Did you see him any more from that time on, until the Mississippi incident?

A. I don't recall, sir, having seen him.

Q. And where were you working in the latter part of September, 1962?

A. In Mississippi and Louisiana, both. My job—I worked in both places.

Q. What kind of work were you doing?

A. Field-engineer, Southwest Oil Field Products.

Q. Were you in the vicinity of Oxford or Jackson or any of those places in the latter part of September, 1962?

A. Yes, sir, I was.

Q. Where were you?

A. At what—well, I was in Oxford.

Q. You were in Oxford?

[fol. 401] A. Yes.

Q. Was your work in Oxford?

A. No, sir, it was not.

Q. What was the occasion, Mr. Leman, of your going to Oxford?

A. Well, sir, it was just like General Walker said, that—

Mr. Gooch: Wait a minute.

Mr. Watts: Well, that's right, skip what General Walker said.

The Court: Why did you go?

By Mr. Watts:

Q. Just tell us what your concept was.

A. Well, sir, I didn't think that the Federal Government had a right to send troops into Mississippi, should

send troops into Mississippi. And I didn't think you could believe what you read in the newspapers and I wanted to see what was going on for myself, and that's why I was there.

Q. And did you go to Oxford?

A. Yes, sir, I did.

Q. And what did you do when you got there?

A. I didn't do anything.

Q. Did you see anybody that you had previously known?

A. No, sir, I did not.

Q. And from that time on—this was on what day of the week, would you remember?

[fol. 402] A. Yes, sir, I got there, I believe, a Thursday night.

Q. That was a Thursday night. From Thursday night, on, until, we'll say, Sunday, the following Sunday noon, just tell the jury, in your own words, what you did and what you saw and what you heard and what happened.

A. From Thursday night and—until Sunday noon, is that the question?

Q. Yes.

A. Well, Thursday night I got in Oxford and I stopped at a filling station several blocks from the campus and talked to some students at the filling station about where would a place be to stay and they said the town, the reporters, the motels were full and it would be rather difficult to find a place in Oxford and suggested I go to Water Valley.

And so I went to Water Valley and spent the night in Water Valley, which is about 19 miles from Oxford.

The next morning I came back to Oxford and had breakfast, and so forth, and I had talked to several students. This would be Friday. Let me see, Friday noon I talked to General Walker.

Q. Talked to General Walker?

A. Yes, sir, I did.

Q. What was the occasion of your talking to General Walker?

A. Well, sir, he had been—I knew he was interested in [fol. 403] the Mississippi situation. I read in the papers where he was interested in what was going on in Mississippi. And I called him up and I told him that the students were behind Barnett, they supported him; that the student newspaper did not; more or less the student leadership was more or less opposed to Barnett; whereas, the students were, did support Barnett and they felt he was doing what was right for Mississippi.

And then I may have—I probably talked to one or two more students.

And then I left and went back to Water Valley and spent the night.

Q. Now, let's see, this was Friday night?

A. Yes, sir.

Q. All right, go ahead.

A. And then the next morning—well, that night I called back, General Walker had told me that he might come to Jackson, that he had an invitation to come to Jackson, and I was interested in hearing Barnett speak and, also, in seeing General Walker and finding out about what was happening in Mississippi.

And when I had first talked to him during the day, he said he might come to Jackson but he was going to come over there and go back. So I called him that night to see if he actually was coming and he said yes, he was, he was [fol. 404] going to Dr. Ney Williams' home in Jackson.

And so I drove down to Jackson and met him there.

Q. Now let's see, when did you get to Jackson?

A. About 2:00 o'clock Saturday afternoon, about 2:00 o'clock.

Q. Let's see, Saturday would have been the 29th, wouldn't it?

A. Yes, sir.

Q. Where did you meet him in Jackson?

A. At the home of Dr. Ney Williams.

Q. I don't guess you know roughly where that is in Jackson, do you?

A. Yes, sir, it's not too far from the football stadium, I believe going north, or like you were going through town, I believe.

Q. Go ahead and tell the jury what happened, what you did.

The Witness: Sir, Your Honor, could I get a glass of water?

The Court: Yes. Mr. Addington, look in the conference room and get a glass, please.

The Witness: Thank you. Well, from Dr. Ney—from Dr. Ney Williams' house—I met General Walker there, of course. And we went to a press conference, I accompanied him, went with him. We went in my car to a press conference.

[fol. 405] And there was a discussion whether or not we were going to go to the, hear Barnett speak at the football stadium and we decided not to but we went on to a press conference and—

By Mr. Watts:

Q. Where was that press conference?

A. I believe it was the Sun & Sand Motel in Jackson, Mississippi, second floor. It was on the second—press conference on the second floor, some room, particular—

Q. Would you have any recollection what press personnel were there?

A. I remember one name, Peter Kyss, K-y-s-s, I believe, but I'm not—

Q. Did you know what outfit he was with?

A. As I recall, it's the New York Times. There were a lot of others. There was about 20 or 30 reporters there.

Thank you, sir, very much.

(Handed water.)

Q. And without bothering the jury with too many details, just tell them generally what occurred at the press conference?

A. Well, they—he, General Walker, read a statement before the news, before the news or TV camera and then—well, a lot of reporters had questions and they would ask him, did he—one reporter, this Mr. Kyss, is the reason I remember his name is, he kept asking him, was there going [fol. 406] to be any violence in Mississippi, did he—and I distinctly remember what General Walker said—

Mr. Gooch: Just a moment.

Mr. Watts: Don't say what General Walker said. That would be hearsay.

The Court: That would be hearsay.

The Witness: Yes, sir. Excuse me.

They asked him about—

By Mr. Watts:

Q. Don't tell what the reporters said or anything but just—well, I guess that pretty much shuts you off from the news conference.

There was a news conference held?

A. Yes, and we left.

Q. All right, sir, where did you go?

A. We went back to Dr. Ney Williams' home.

Q. How long did you stay there?

A. I would say about 30 minutes, sir.

Q. Where did you go?

A. Then we decided to drive up to Oxford.

Q. Where did you go at Oxford?

A. Went to the Mansell Motel.

Q. Now was this Saturday evening or night?

A. This was Saturday night. Arrived at about midnight, as I recall, sir. It was about midnight.

Q. Did you get in the Mansell Motel?
[fol. 407] A. Yes, sir, we did.

Q. Tell us about what you did when you got there.

A. I registered both of us and we went in and went to bed.

Q. You say you registered you both?

A. That's correct.

Q. Now there has been some question that has arisen about how you registered. How did you register?

A. I registered my name and I registered the name of John Waters for General Walker.

Q. Why did you register General Walker under the name of John Waters?

Mr. Gooch: Object to what he had in mind when he registered him under an assumed name. It's immaterial.

The Court: Overruled. Go ahead and tell him why.

A. Because, due to the reporters, sir. There was reporters trying to get ahold of him all the time and he could not sleep at night. We just thinking it would be a lot better if the reporters were not calling and bothering him all night long.

Q. And were you able to get a night's sleep?

A. Yes, sir, we sure were.

Q. And what happened the next day?

A. Well, we got up and ate breakfast and went downtown to the courthouse, talked to the Sheriff, Sheriff Joe Ford.

[fol. 408] Q. Joe Ford. Now could you kind of describe Oxford? Is it laid out on a square kind of like Texas towns?

A. Well, there is a courthouse and streets circled around the courthouse and then there is north and south and east and west streets leading off there basically, and the campus is generally east of town and maybe slightly south of the courthouse, but it's—

Q. About what time did you get to the courthouse?

A. Got to the courthouse about, I would—about 11:00 o'clock, sir, I think—10:00 or 11:00.

Q. What happened then?

A. Well, General Walker talked to Sheriff Joe Ford.

Q. Without saying and going into hearsay and things somebody else said, just tell the jury generally what was the nature of this conference.

A. Well, the nature of the conversation was that the troops had moved in north of Lake Sardis the night before and that—I can't say what Walker said or anything like that

Q. No, they would object to you saying what Walker said.

A. Well, where we resided, were staying, and—

Q. That is, you told the Sheriff where you were staying?

A. The Sheriff, right, and offered to be of any help.
[fol. 409] That was the nature of the conversation.

Q. And where did you and General Walker go from there?

A. We went, let me see, I believe we drove through the campus to look at it, we sure did, drove—

Q. About what time of day was this?

A. About 11:00.

Q. Now to get to the campus, and I'll lead you a little here to shorten the thing, you go south from the courthouse square and then turn west to the campus, do you not?

A. Yes.

Q. And after you turned west, you get on that University Boulevard that you can see on the map?

A. Yes, sir. I don't see University Boulevard. Yes, sir, I see it now.

Q. Have you had a chance to look at that map?

A. No, sir.

Q. Walk over there and look at it. Take that pointer with you and let's get you oriented. See the pointer behind you?

Now always—have you ever had any military training?

A. No, sir, I have not.

Q. Always the top of a map is north?

A. Yes, sir.

[fol. 410] Q. Now start there on the east side, which would be your right, and move along Military—or University Avenue or Boulevard, whatever it is.

What is that installation you just ran on to there?

A. University of Mississippi.

Q. All right. What's the circular pattern there?

A. You mean the Circle?

Q. Yes, sir. That is the Circle?

A. That's correct.

Q. What's on the east end of it?

A. The east end of it, there is a monument there. This is the east, yes, sir. And there are buildings around it, of course.

Q. All right. Take your seat again. Now on this occasion, about noon, how far westward toward the University did you get?

A. About noon? We drove through the campus and on out of it.

Q. Did you make the circle?

A. Yes, we did.

Q. What did you observe?

A. Very quiet, peaceful campus, very nice.

Q. Did you see anyone at all out roaming around?

A. There were very few students on the campus at that [fol. 411] time.

Q. All right. Then where did you go?

A. Then we went—I believe we went and filled up with gas and then we went back to the motel, back to the Mansell Motel.

Q. How long did you stay there?

A. Around an hour, half an hour, something like that.

[fol. 412] Q. How long did you stay there?

A. Around an hour, half an hour or something.

Q. Then where did you go?

A. We went to lunch.

Q. How long did all that—where did you go from lunch?

A. From lunch we went—well, from lunch we went back to the motel again.

Q. And then where did you go from the motel?

A. To a news conference at the—at another motel.

Q. Now, when had that news conference been set up?

A. For about 4:45, and we arrived a little late.

Q. With whom and when were the arrangements first made for that news conference?

A. They were made at lunch with Reporters in the restaurant.

Q. Now, from the time you and General Walker got to Oxford, Mississippi, on Saturday night until the time of this news conference, did either of you see anyone that you knew?

A. I didn't. Let me see. I don't believe General Walker saw anybody he knew.

Q. All right, sir. Tell the Jury, without being able to say what was said, tell them what happened at the news conference.

[fol. 413] A. The rumor was going around that the Marshals were on the campus. That was one thing that happened there.

Q. All right.

A. And, well, a statement was given and questions asked and answers given and that concluded the news conference.

Q. Where did you and General Walker go from there?

A. We went—we went to the campus.

Q. Who was driving?

A. I was driving.

Q. Did General Walker ever do any of the driving?

A. No, sir, he did not.

Q. Where did you go on the campus?

A. We didn't go on the campus.

Q. Was this daylight or dark?

A. Daylight.

Q. How far toward the campus did you go?

A. We went to the edge—could I?

Q. Sure, go ahead and point it out.

A. Is this the railroad track (indicating chart)?

Q. That is the railroad track.

A. We went to right here, we went to this parking lot and turned around and left (indicating chart).

Q. Now, you mentioned that news conference. Who asked for it?

A. The reporters asked for it.

[fol. 414] Q. General Walker didn't volunteer it?

A. No, sir, he was—he was rather reluctant to have a press conference at all, but there were about six or seven reporters that insisted very strongly that he at least give them some kind of a conference, so finally he agreed to have a news conference.

Q. How close did you say you got to the University entrance?

A. To the railroad track.

Q. Why did you stop there?

A. Because the State Police were admitting students only; rather, the Highway Patrol, the Mississippi Highway Patrol.

Q. Where did you go from there?

A. From there we went back to the motel. Well, we went by the Courthouse. It was closed and we went back to the motel.

Q. All right, now, take it on from there and tell us what you did and what occurred.

A. Well, we called sometime or another—I called my brother and told him where I was and we called Jackson and we called back down to the Courthouse and this time the Sheriff was there and we went to—we went back to the Courthouse. And I remember we talked to Clyde Watts. We—you called, in fact, Clyde.

[fol. 415] Q. From Oklahoma City?

A. I believe that is correct. I answered the 'phone.

Q. All right. And—

A. And I went—then we went back down to the Courthouse. We reached the Sheriff on the 'phone and then we went down to the Courthouse.

Q. What did you see at the Courthouse?

A. Sir?

Q. What did you see at the Courthouse, or what happened at the Courthouse?

A. Well, at this time a lot of Sheriffs and Deputies were there and the word had gone around that Meredith was on

the campus and the Marshals were on the campus. Everybody—nobody knew what happened, why it happened, or anything and the Sheriff was pretty sad and—anyway, a representative of the Governor arrived and said—

Mr. Gooch: We object—

Mr. Watts: Don't say what the Governor's representative said. You did find out there was a Governor's representative at the Courthouse?

A. Yes, sir, that is correct. He arrived and left. He wasn't there when we got there but he was there about the time we left, but he was leaving too.

Q. Go ahead and tell the Jury what happened.

A. Well, we left the Courthouse and went to dinner at [fol. 416] the restaurant in downtown Oxford.

Q. About what time did you get there?

A. We got there a little before 8:00. A little before 8:00 p. m.

Q. Okay, go ahead.

A. And, well, we listened—can we say that—we listened to the President's speech.

Q. Don't say what he said.

A. We listened to the President's speech then had dinner. That is what happened.

Q. All right. Go ahead and tell us what else happened.

A. And then we left—we left the cafe and went to the campus, the Ole Miss campus.

Q. How did you happen to go to the campus?

A. Well, after the—after the speech, well, whenever we were leaving, in fact, we were told—can I say what we were told.

Q. You can say what occurred like that.

A. We were told that there had been a disturbance on the campus. The disturbance had broken out on the campus and—

Q. Well, prior to the time you were told that, where were you going?

A. Prior to the time?

[fol. 417] Q. Prior to the time you heard there was a disturbance on the campus.

A. Well, I don't know that we had made up our mind. Probably back to the motel. Every time we got a chance we went back to the motel, but I don't know of any definite plans. We didn't have any plans to go anywhere at all. We were just there.

Q. Go ahead.

A. And we went to the campus and parked the car and went into the campus.

Q. I think you can step down and show—take the ruler and show the Jury where you parked.

A. We parked down in this parking lot right here (indicating).

Q. Is that what direction from the railroad overpass?

A. That would be south. South of the railroad overpass. South and to the east.

Q. Now, what did you do after you parked your car?

A. We walked right up here, walked right across this side of the overpass, and right up the sidewalk, right up the sidewalk all the way to the lights, the area of the lightpole.

Q. Did you notice some barricade out in the street?

A. Barricades?

Q. Or did you pay any attention?

[fol. 418] A. No, sir, but it was dark. I could have missed them.

Q. All right. Go ahead then and tell the Jury what occurred?

A. Well, we were—we stayed in this area, I would say, for around ten or fifteen minutes. It was a short period of time.

Q. Now, what did you see when you got up to that area?

A. Well, there was, I would say, one hundred to a hundred and fifty—maybe one hundred to two hundred people in this area right here (indicating), about a couple of hundred people standing there and talking. Everybody was just talking. I believe I can say this. One of the things they wanted to know—

Mr. Watts: Now, at this point, come up here, Mr. Gooch.
(Conference at the Bench not taken.)

By Mr. Watts:

Q. Now, from this point on, Mr. Leman, the Court will allow you to tell not only what you saw but what people said, so everything you can think of that you heard somebody say, and at this point I want to suggest to you that you just turn back your memory to this evening and endeavor to relive it and tell the Jury just exactly what happened.

[fol. 419] A. Just tell them—

Q. Tell them everything that happened.

A. The entire—

Q. Tell them what you heard, what you saw.

A. The—all the time we were on the campus?

Q. Right. I may stop you and ask a question as we go along.

A. Okay.

Q. But just go ahead.

A. Well, one of the main questions, of course, we had in our mind was "How did the riot start, what happened that started it?" And a lot of students answered that question, and there wasn't any doubt in my mind at all how the riot started, after talking to the people. They said that the—is that all right?

Q. Yes, sir.

A. They said that they were lined up, the State Police were inbetween the students and the Marshals, I mean—yeah, between the students and the Marshals, and at the time they were pushing the students back further away from the Marshals and the Marshals opened fire with tear gas, and this is how they said the riot started.

Then, there was a lot of students that said, "Walker, we want a speech, we want a speech," and, you know, wanted him to make a speech, you know, and I told Walker the [fol. 420] students wanted him to make a speech and he

told me, "Louis, I don't have anything to say to them. I don't have anything to say to these students," is what he said.

And, as I remember, there was a Deputy Sheriff and he was a heavy-set fellow with a badge on. He met us, rather he introduced himself to us at that time when we arrived there, and stood around with us, and we talked to a few people and then we walked—after fifteen or twenty minutes we walked further away.

When we first arrived there there was a lot of tear gas that had been fired, a lot of Marshals, what looked to me was somebody was coming out, shooting tear gas. I would say coming out in this area and shooting it way back in this area (indicating chart), and the crowd—it was sort of the feeling to me, it seemed like, anyway, you know, that they were trying to get after us or something.

But anyway, we walked on—it died down peaceful for a while and we walked on up in here to look, and right around in here, and I would say probably we spent about fifteen minutes in this area in here (indicating chart).

During this time I remember seeing the State Police cars—excuse me, the Highway Patrol, Mississippi Highway Patrol cars start coming out from this area, and they stopped, the students would stop them.

By the way, the students were scattered all over the [fol. 421] campus. There were no large groups. The only large groups I saw of any size would be a hundred and fifty or two hundred right in this area here (indicating), and there was a group somewhere back in here, I guess, and I guess there were people standing around in area here (indicating), and a smaller group, maybe one hundred or something. But there was no—the rest of the students were just scattered out.

You would just see people everywhere, generally speaking, and, oh yeah, the Highway Patrol was leaving and they would stop and the students would ask them why they were leaving. I guess they asked them that, I didn't hear them ask them that. But anyway, they stopped them, and

then they would go on. A whole line of them just left, and about the time they left we walked back to here.

And a lot of words was going around that Barnett had betrayed, betrayed the students and that the Highway Patrol was leaving, "They are leaving us to the Marshals," and everything, and I remember Walker—of course, people were still asking Walker for a speech, and it looked to me like—I guess they—it looked to me like they thought he was about the only one left there with them, but General Walker told me that—he said, "These students think Barnett sold them out," and at that time he walked up and stepped up on the monument and addressed the students. [fol. 422] And he told them, as—I distinctly remember what he said. He said—the first thing he said, he said, "There is no need for violence. Violence is not the answer." He said, "You do have a right to protest." He said, "The troops—the troops—there is no need for the Military in Mississippi," that they should have been watching Cuba. He mentioned the Mississippi Air Force and said, "Cuba is that way." And, oh, yes, he said, "According to the Governor's representative Barnett, Barnett hadn't . . .", he said, "Stand by your Governor, he has not sold you out." That was one of the main things he was making.

He said, "According to the Governor's representative . . .", not according to him, but according to the representative of the Governor, ". . . if anyone sold them out it would be the head of the Highway Patrol in Mississippi." But he said Barnett had not sold them out.

And then he stepped down from there and walked away from the students. I don't remember which direction, but not very far away from that monument and stood around talking for several—for a period, and finally we walked on up to the front, I would say in the area of the flagpole, and maybe we walked right around—well, right around the flagpole and back in this area. We stayed right around in here (indicating) for a while, and the tear gas was getting pretty hard in your eyes, and everything, so we walked on [fol. 423] back into here, and we spent the whole entire

rest of the evening back in this area right in here, right in here and right in here (indicating), and the only other time we went up toward the front that I recall at all was when they had a peace conference. One of the students was arranging for a truce, and one was showing a white flag and we walked, we did at that time, walk back up to the front and got probably the closest to the Marshals we ever got. We were behind some students, and we just watched the peace conference. They stood and talked a while and argued and harangued, and tried to make a deal, I guess. I couldn't hear what they were saying. There was only about four or five Marshals stepped out from the Marshals, and a lot of vehicles were parked around here facing the students. I guess trucks and jeeps and so forth.

And then after—we walked on back and finally there was no more peace conference either.

And, let me see, we just spent the night talking to people back there, discussing the situation, and people would ask General Walker his views on what happened there, and the situation.

And then about—I remember the fire truck and the bulldozer incident. This was all after the peace conference, by the way. There was no more—and then we finally left the campus. Got tired and left about 1:30, I would say, [fol. 424] 1:30 a. m., and walked back down here and got in the car and drove to the motel.

We stopped here and talked to the State Police, or State Highway Patrol, and then we went on back to the hotel.

Does that cover it?

Q. That covers it, I believe, Mr. Leman. Have you done your best to cover everything you can think of?

A. I can't recall anything. I mean, there has certainly, I know, been a lot of talk about charges, absolutely—

Mr. Gooch: Well—

Mr. Watts: That is all right. Just—you didn't study any pre-law, did you?

A. No, sir, I did not.

Mr. Watts: I believe that is all.

. Cross examination.

By Mr. Gooch:

Q. Mr. Leman, without belaboring the matter as to the details, I take it that you were quite a supporter of General Walker during the time he campaigned for Governor of Texas in 1962?

A. Yes, sir, that is correct.

Q. I believe you said that you thought that his views paralleled—or your views paralleled his, I believe you [fol. 425] said?

A. Well, I certainly agreed with him, that the national situation was poor.

Q. Now, you went down to Oxford, or up to Oxford from Brookhaven on Thursday before the Sunday incident at Oxford?

A. That is correct, yes, sir.

Q. And you went down, I assume, to find out the situation on the campus, the temper of the students and whether or not the students were reacting either toward Governor Barnett, or to the will of the Court, is that right?

A. To find out—first of all, to see what the situation was, and to find out whether the students were for Barnett or against Barnett.

The papers were saying they were against him.

Q. Now, Barnett—now, we are talking about Governor Barnett, the Governor at that time?

A. Yes, sir.

Q. Governor Barnett at that time was still defying the orders of the Federal Court on the admission of Meredith, was he not?

A. Sir, I am not in a position to say whether or not he was defying the Court's orders.

Q. Well, let's see if you know anything about the Court [fol. 426] orders. Did you follow the Meredith case to any degree while you lived there in Mississippi?

A. I did read the papers, yes, sir.

Q. Did you know that Meredith had been ordered by the Federal Court to be admitted as a student at the University of Mississippi?

A. Yes, sir, I believe by the New Orleans Court.

Q. I believe you stated on direct examination you didn't believe in the Court having that right?

A. No, sir.

Mr. Watts: If the Court please, I object to that. No such statement was made. I challenged the record.

The Court: Sustained.

Mr. Watts: That is not fair cross examination. Excuse me.

Mr. Gooch: Just a minute.

Mr. Watts: All right, I will withdraw that last statement.

By Mr. Gooch:

Q. Well, you did say something to the effect that you didn't believe in the use of Federal troops?

A. Yes, sir, that is correct. That is correct.

Q. Then, did you know at that time how a Court order could be enforced?

[fol. 427] A. Well, sir, do you want my views?

Q. Yes, be glad to have your views.

[fol. 428] Q. Yes, sir, I would be glad to have your view.

A. Well, I'm sure with Federal Marshals. A court order should be enforced according to the Constitution with Federal Marshals, according to my understanding of the Constitution.

Q. Just to skip ahead a bit, at the time you got there, the Federal Marshals were the only ones there attempting to enforce the court order, weren't they?

A. No, sir, that's not true.

Q. Who was there when you first got on the campus?

A. Fifteen miles from Oxford, there were 160 something soldiers, Mr. Gooch.

Q. I'm talking about on the campus.

A. Well, that's correct, there were only Marshals.

Q. The only persons on the campus at the time you got there to enforce the court order were the Marshals, were they not?

A. As far as I knew. I couldn't answer that definitely.

Q. All right. All right. You didn't see any troops there then?

A. No, sir, I did not.

Q. All right. Now, did you know that Governor Barnett had blocked the way personally, at least one time, and Governor, Lt. Governor Paul Johnson had blocked the path of Meredith's entrance to the University prior to September the 30th, 1962?

[fol. 429] A. I did not know this firsthand. I knew it from the newspapers, reading the newspapers.

Q. At least you had heard that that happened?

A. Yes, sir.

Q. You knew Governor Barnett was opposing the entrance of Meredith into the University of Mississippi, did you not?

A. Well, sir, I knew that he was opposing action by the Government, Federal Government. I did not know whether he was opposing the actual entry—yes, sir, I would say that, he was opposing the entry of Meredith. I don't know what reason he was opposing it for.

Q. It's immaterial. I'm trying to find out if you knew that Governor Barnett was opposing the entry of Meredith into Ole Miss?

A. Yes, sir, I sure did.

Q. All right.

A. Yes, sir.

Q. You have previously testified, I believe, that you knew that the Federal Courts at that time had ordered Meredith entered into the University of Mississippi?

A. Yes, sir.

Q. All right. Now you got into Oxford on Thursday. Counting back, that would be, Sunday the 30th; the 29th, the 28th—I guess about the 26th or 27th?

A. No, sir, I think Thursday would be—let's see. Sunday [fol. 430] was the 30th. Saturday would be the 30th—29th.

Q. 29th?

A. I mean 29th. Friday, the 28th. I got in there Thursday night of the 27th.

Q. 27th?

A. Right.

Q. Now at that time had you heard from General Walker as to his position relative to the Mississippi matter?

A. No, sir, I had not except the newspaper account. That would be all I heard.

Q. Had you heard a newspaper account or a TV or radio account to the effect that General Walker had made a speech in Dallas to the effect that, "Bring your flag, your tent and your skillet"?

A. I read that in the newspaper.

Q. "Ten thousand strong from every state in the Union," or words to that effect?

A. I read that in the newspaper, yes, sir.

Q. "Now or never"?

A. That may have been included in one of the statements.

Q. Did you hear that he said, "We have talked and listened. It's now time to move," or words of that import?

A. Well, sir, the main thing I understood about what General Walker said, that he was supporting the position of [fol. 431] Ross Barnett.

Q. Supporting the position of Governor Ross Barnett?

A. Right, and against the use of troops. Against the use of troops. He was objecting to the use of troops.

Q. All right. At that time you knew that Governor Ross Barnett was opposing the entry of Meredith into Ole Miss; you have testified to that, haven't you?

A. Yes, sir, I did.

Q. All right. Now the first communication that you had with General Walker after you got to Oxford was when?

A. Was Thursday around—no, I got there Thursday night. It would be Friday, Friday around noon. Friday after—around noon I called him.

Q. Do you know from what place you called General Walker?

A. Yes, sir, I do. It was from a phone in the Mansion House Cafe, I believe it was, a small cafe in downtown Oxford.

Q. The Mansion House Cafe? That's on the—that would be south from the courthouse?

A. Yes, sir.

Q. And on, I guess, the west side of the street, is that correct?

A. Yes, sir, that's correct.

Q. It was called the Mansion House Cafe?

A. I don't—I couldn't say definitely, sir.

[fol. 432] Q. Do you remember making the call on a credit card?

A. Yes, sir.

Q. And do you remember the conversation you had with General Walker?

A. Yes, I do. I sure do.

Q. In that conversation did you tell General Walker that what he needed down there was leadership?

A. I told him—no, sir, I did not. I told General Walker that the student leaders were opposed to Barnett; the newspaper editor was against him.

I told him that the students themselves were actually for Ross Barnett's position. This was very evident. This was very evident on the cam—

Q. Let me ask you this specific question: Did you say to General Walker in that conversation, "General, all we need is leadership"?

A. Absolutely not. I did not say that, Mr. Gooch.

Q. Did you say to General Walker, "How soon can you get here?"

A. No, sir, I did not.

Q. Did you ask General Walker whether he was coming or not?

A. Yes, I may have asked him if he was coming to Mississippi. He didn't—he told me—well, you don't want to know that.

[fol. 433] Q. Sir?

A. Well, he told me that he didn't even know whether he was coming to Ox—I asked him—no, I didn't ask. No, I didn't ask him anything about whether he was coming. He said that he might be coming.

Q. Did you repeat during that conversation a statement to this effect, while you were talking to General Walker: "You say you have a plane standing by." Was that mentioned?

A. Yes, sir, because I—the conversation was that he brought it up that he was invited to Jackson, Mississippi, but he did not know definitely whether he was coming and that to call him later and find out if I was going to meet him in Jackson.

Q. Now this would be on the 28th?

A. This would be on—was Friday. Friday, around noon.

Q. I believe that would be the 28th?

A. That's right.

Q. I am not trying to mix this up because I have confusion running backwards myself.

A. Yes, sir.

Q. Or maybe it's the twenty—

A. It's the 28th.

Mr. Watts: 28th.

By Mr. Gooch:

Q. The 28th. Did you hear him say something to the [fol. 434] effect that, "You say you have a plane standing by"?

Did he say anything in the conversation about having a plane standing by?

A. I don't remember that he did but he could have because he did come over there to Jackson by airplane, so he may have said that.

Q. Do you remember mentioning in the conversation of General Walker a man by the name of Lamar Wilkerson of Walnut Grove, Mississippi, telephone numbers 8881 and 8483?

A. I don't remember who he is or I don't remember mentioning his name. I could have but I don't—don't recall it at all. In fact, the conversation was about, as I have said in the previous testimony.

Q. All right, now, we will skip over and not go into repetition as to other matters but you say you called him again that night, I believe?

A. Yes, sir, around midnight from Water Valley.

Q. And I believe at that time—or did he tell you at that time whether or not he was coming?

A. At midnight, he said he was coming, yes, sir, he did.

Q. Did he tell you how he was coming?

A. Well, I think he did but, sir, I couldn't say definitely.

[fol. 435] Q. All right. Did he tell you he was coming in a private plane?

A. I would say he probably did tell me that, yes, sir.

Q. Did he tell you what time to meet him?

A. No, sir, he just—I'm sure we mentioned a general time that he would be in there around noon or afternoon or something.

Q. And you drove, I assume, then, down from Water Valley to Jackson?

A. That's correct. Sure did, Saturday morning.

Q. Did you check out of the motel there?

A. Yes, I did.

Q. And you met him I believe you stated at Dr. Ney Williams' home?

A. Yes, sir.

Q. You didn't meet him at the airport then?

A. No, sir, I did not.

Q. All right. Now the news conference that was held at the Ole—no, at the, I believe, at the Sun & Sand, you said?

A. Yes, sir, that's right.

Q. That was held sometime on, was that Saturday afternoon?

A. 6:15 p.m., is about when it started.

Q. That would have been the 29th, I believe?

[fol. 436] A. Yes, sir.

Q. And will you tell us just generally what General Walker said at that press conference?

A. Yes, sir, I'll be glad to.

Q. Fine.

A. He repeated his stand in support of Mississippi. He was asked by a reporter whether he had any plans for violence. He said that, very clearly and distinctly—and he said it slowly; that's why I actually never have forgotten when he said, he said, "As far as I am in any way concerned and from what I see here in Mississippi, any violence and blood shed will be initiated by and on the hands of the Federal Government"; that's exactly what he said.

And Mr. Kyss, the New York Times reporter, was standing right in front of him when he said—a bunch of reporters were all around him.

Q. Incidentally, was that press conference televised?

A. The first portion—a prepared statement of the press conference was taken on TV camera. I don't know whether they actually televised it or not.

Q. Let's find out now what he said during the time he was being televised. Is that when he said something about violence?

A. No, sir, I don't—no, he just read a prepared statement.

[fol. 437] Q. What did he say in the prepared statement?

A. I don't remember very well. It was just a general statement about supporting Barnett, as far as I—he might have said he was here in Mississippi—

Q. Did he say he was standing shoulder to shoulder with Governor Barnett?

A. It's possible he did. I don't remember the statement.

Q. Now this was held at the Sun & Sand Motel, I believe you said, on the second floor?

A. Yes, sir, that's right.

Q. Was General Walker standing before some microphones and a TV camera at the time he made that talk?

A. Yes, sir, let me see—I don't know—yes, sir, he sure was.

Q. Do you know whether or not the entire conference was televised?

A. I know that it wasn't.

Q. You know that it was not?

A. Yes, sir.

Q. And you say you remember a question being asked General Walker about violence?

A. Yes, sir, I do.

Q. And what was General Walker's answer?

A. "As far as I am in any way concerned and from what [fol. 438] I see here in Mississippi, any violence and blood shed will be initiated by, and on the hands of, the Federal Government."

Q. All right. Now you are positive that that statement was made at the Sun & Sands Motel?

A. I'm positive, absolutely positive.

Q. All right. Did General Walker answer all of the questions that were put to him at the Sun & Sands Motel there in Jackson on the night of the 29th?

A. No, I don't—I don't—I don't know if he answered all of them. Lots of reporters talked at the same time sometimes. But I think he answered most of the questions.

Q. Now after he had finished his interview, what did he do?

A. We went back to Dr. Ney Williams' house.

Q. Now I am talking about there in front of the microphones, did he walk off of a platform or walk away from—

A. No, we—this TV camera and everything was in one—was in one room. And we talked—after reading the prepared statement on TV, he walked over into the hallway and that's where the questions, all the questions and answers were held, off the TV, in the hallway.

Q. Were there any questions asked him prior to the time he walked away from the TV camera?

A. The reporters obviously, to be right frank, Mr. [fol. 439] Gooch, the reporters all wanted to ask him some questions while they had the TV camera on him and everything and they all asked him at the same time. This was actually a bunch of people asking questions and with camera on him, see, and he did not answer any questions before the TV camera.

Q. All right. It was after he left the camera, before he answered any questions?

A. That's correct, Mr. Gooch. That's correct.

Q. All right. Now immediately after the interview there at the Sun & Sand Motel, I believe you stated that you started to Oxford, is that correct?

A. No, we went back to Dr. Ney Williams' house.

Q. And I guess repacked your clothes or—

A. Well, we just—

Q. Or were the clothes already packed?

A. Yes, that's correct.

Q. Then when you left Dr. Williams' house to go to the interview, you were ready then to go on to Oxford as soon as the interview was over?

A. Yes, sir.

Q. All right.

A. Well, we decided to go when we got back to Dr. Ney Williams' house.

Q. Then you took off for Oxford about what time?

A. About 7:00 p.m.—let's see, maybe a little later than [fol. 440] that.

Q. Well, I believe it's about 150 or '60 miles from Jackson to Oxford, it is not?

A. Yes, sir, that's correct.

Q. Had you made previous reservations at the motel, Mansell Motel?

A. We made reservations, or somebody made them for us; I don't know who made them.

[fol. 441] Q. Where?

A. Be at Dr. Ney Williams' house.

Q. Is that after the press interview or before?

A. I think it was after.

Q. All right.

A. But I don't remember exactly.

Q. Then you got down to Oxford and you detailed pretty well what you did there. You did visit the campus a couple of times, or maybe three before the night of the riot, is that correct?

A. Once. Well, we went to the campus one time, and did not enter the campus, and another time on the morning, the Sunday morning, we just drove through it, and on through it. Never had seen it before.

Q. Had you seen it before?

A. Yes, sir, I had seen it before.

Q. Had General Walker seen it before?

A. No, sir.

Q. All right. Now, I believe you stated—going on down a little bit further, without repeating—that you went to dinner at the—somewhere. I don't believe you said. Was it the Mansion House Cafe?

A. What time was this?

Q. For dinner on September 30th?

A. Yes, sir, that was at the Mansion House Cafe.

[fol. 442] Q. And do you know how many people were there?

A. I would say twenty or twenty-five, probably, were in there.

Q. Was there anybody eating dinner with you and General Walker?

A. I don't think so, sir. No, sir, I don't remember anybody at the table.

Q. Just the two of you at the table?

A. Yes, sir.

Q. And I hope I quote you correctly, that you said you got there about a quarter to 8:00?

A. Yes, sir, about.

Q. And I believe I quote you right when you say you both listened to President Kennedy's speech?

A. Yes, sir, General Walker listened to it and I listened to it too.

Q. There in the Mansion House Cafe when you were having dinner?

A. Yes.

Q. Do you recall any remark General Walker may have made after having listened to President Kennedy's speech that night?

A. No, sir, I don't remember any.

Q. Do you remember generally what President Kennedy's speech was about?

[fol. 443] A. Well, his speech generally was not no violence, peace and law, as I recall. That was the general text of his statement.

Q. He talked about constitutional authority?

A. Yes, sir, and defiance. Yes, sir, let's see.

Q. And defiance of Court orders, didn't he?

A. Yes, sir. I don't distinctly recall what he said about defiance of Court orders.

Q. Well, I will ask you this specific question.

Do you remember that when the President's speech was over General Walker made the remark relative to the President's speech, "nauseating, nauseating"?

A. No, sir, I don't remember that remark.

Q. Would you say it didn't happen?

A. Well, it possibly did, I—it was in the cafe, I was with General Walker and I do not remember the remark at all.

Q. Then after the President's speech you and General Walker went to the campus, or tried to get to the campus?

A. Yes, sir.

Q. Now you detailed how you parked at some distance away from the entrance to the campus?

A. Yes, sir.

Q. Did General Walker remain there with you in the [fol. 444] car, or did he get out and leave you to park, and start on toward the campus?

A. I think we parked the car and we both got out at the same time, but I might have parked it. But I don't—I don't know. Well, sir, the way I remember it, we parked the car and both got out. He might have got out a little before me and I parked the car, but he wasn't ever—he stayed right there.

Q. He stayed right there?

A. Yes, sir, right.

Q. You are positive that he didn't walk on ahead?

A. Well, he was ahead of me.

Q. For a considerable number of yards, prior to the time you got the car parked?

A. Well, sir, I know that he was ahead of me when he crossed the railroad track, so he must have been ahead of me before we crossed the railroad track.

Q. Did he at any time, as you approached the campus, or that evening, turn and wave to you?

A. Yes, sir, he told me to come on across.

Q. Did he call you by name, or did he just wave at you to come on?

A. He didn't call me by name; I was right behind him. I was in line right behind him on the trestle.

Q. Did he wave come on?

[fol. 445] A. He said (demonstrating) like that, that's right.

Q. As he got near the entrance to the campus, did you notice any groups or clusters of people over on the north side of University Avenue that might have hailed General Walker, or said something to him?

A. I don't—I didn't notice any people on the north side, no, sir.

Q. Did you notice him there at about the time he got to the campus, that he again gave the sign, "Come on," (demonstrating)?

A. The only time I saw him give that sign was along at the bridge.

Q. Was a lot of people on University Avenue that night?

A. Yes, sir, it was pretty thin—the lights—they were scattered out, but it was a pretty long walk. There was more on the sidewalk, I guess, walking with us. There would be three or four people right in there immediately walking with us.

Q. Was the people—excuse me.

A. And there might have been people on the other side, I don't recall.

Q. Were people strung out pretty well all up and down?

A. I would say that would be a good description.

[fol. 446] Q. Would you estimate the time you and General Walker got to the campus that night?

A. I would say it was around 8:45. 8:45 p. m.

Q. You have detailed that as you approached the area of the monument, you estimate, I believe, and correct me if I am mistaken, that there were a hundred and fifty to two hundred people in that area.

A. Yes, sir, that is—now, that is the area surrounding the light and the monument and that area.

Q. I am talking about as distinguished from up near the Lyceum Building or the YMCA. Now, I understood you to say that in the area of the monument?

A. That is correct. That—

Q. You figure there were about a hundred and fifty to two hundred people?

A. That is correct.

Q. Did the crowd hail General Walker as he came up on the campus that night?

A. Several individuals recognized General Walker and met him and he would introduce himself, and some people were saying, "There's General Walker," but as far as any massive hail, there was none at all.

Q. Several individuals would say, "Here's General Walker?"

A. Yes, sir.

[fol. 447] Q. Did they say anything about, "Here is our leader."

A. Some people might have said that. I don't remember that.

Q. My question—

A. Maybe they did. A lot of them wanted him to lead them, that is for sure.

Q. They did try to get him to lead them?

A. Oh, yeah.

Q. Now, was any question asked him about where his volunteers were, or anything of that sort?

A. That question might have been asked.

Q. Do you know what his answer was, or if he made any answer?

A. No, I don't remember. I couldn't answer that because I don't remember the question or the answer.

Q. All right. Now, as he got there to this hundred and fifty or two hundred people in the area of the monument, you have stated that a number, or some of the crowd, or whoever it was, spoke to him and said, "Here is General Walker, here is our leader," or something to that effect.

Am I quoting you fairly accurately?

A. Well, yes, sir, and several of them walked up to him and introduced him. And some of them asked him how to drive the Marshals out, stuff like that, and he said—well, any way he said, "You don't."

[fol. 448] Q. All right. Now, you have also said that you stood around there ten or fifteen minutes and they were trying to get him to speak?

A. Yes, sir, that is correct.

Q. Then I believe you said, and I believe you took the pointer and traced a route from a point near the monument north to the sidewalk, up to about even with the flagpole, that you say you and General Walker walked?

A. I would say it was about along the—

Q. All I am recollecting now—go ahead. All I am recollecting now is about.

A. About in this area here (indicating).

Q. Tried to get your picture. I don't want to misquote you at all, just trying to bring it out here.

A. All right.

Q. Traced the route you and General Walker took after you had been greeted by these persons down at the monument?

A. Well, sir, it would be hard—I couldn't—it would be hard to exactly trace the route.

Q. I understand.

A. We didn't go very far up, and we just—we might have come back down this way some.

Q. Well, now, how far did you go?

Mr. Watts: Wait just a minute, let him finish.

[fol. 449] Mr. Gooch: Just a minute, Mr. Watts, this is cross examination.

Mr. Watts: The witness can finish his answer.

The Court: I know that, Mr. Watts. You may finish your answer, Mr. Leman.

A. This (indicating) is the area of the route we took, generally speaking. It might be wrong a few feet, but not very far.

Q. All right. You have indicated a route from the monument to a point near the flagpole, have you not?

A. Yes, sir, that is correct. That is true.

Q. I am saying you got to the flagpole, but the way you marked it with the marker, you got nearly up to the flagpole?

A. That is correct.

Q. Do you know whether you went past the flagpole?

A. No, I don't. We didn't at this time. We sure didn't.

Q. All right. Now, at that time was there just you and the General walking along there, or were there others there too?

A. A Deputy Sheriff was with us and there might have been one or two others, or three. There was no—just three or four of us, and—just three or four in other words.

[fol. 450] Q. Incidentally, you mentioned this Deputy Sheriff. Do you recall General Walker asking the Deputy Sheriff to deputize him?

A. No, sir, I don't recall him asking him that.

Q. You were there right with General Walker at the time you met the Deputy Sheriff?

A. Well, sir, the way it was, I would usually be a few feet away, and I heard some of the things he said and a lot of things I didn't hear, because I might have been talking to somebody myself.

I was with General Walker, but I didn't try to stand right by him and hear everything that was said.

Q. Now, at the time you walked on the campus, you and the Deputy Sheriff and General Walker and perhaps one or two others were walking westward down toward the Marshals. You were walking westward towards the Marshals weren't you?

A. We walked westward, that is correct, yes, sir, toward the Marshals.

Q. All right. Now, at that time what was going on around the Lyceum Building?

A. Well, you couldn't actually see. It really is hard to say. It was very hard to see. There was a lot of commotion going on up there, and I am assuming, like—well, there was, in fact, there would be a few students around, [fol. 451] or figures. You would see figures scattered all over. There were figures scattered all over the campus, but only the groups were right here and right here (indicating) and I guess right here (indicating).

Q. Did you see anything—

Mr. Watts: If the Court please, the witness can't answer if he gets almost through and then Mr. Gooch interrupts.

The Court: Mr. Watts, sometimes it is hard to determine whether he has finished the answer.

Mr. Watts: If he would just wait half a second, or even a second.

The Court: Had you finished Mr. Leman?

Mr. Gooch: I shall not interrupt you again. I would like for you to tell me all of it.

A. That is all right.

Q. At the time you and General Walker and the Deputy Sheriff and one or two others got up near the vicinity of the flagpole did you see any evidence of stones and sticks and bottles and missiles being hurled at the Marshals?

A. I am sure I saw people. Well, from where? I wouldn't say I saw them. What I have to do, sir, is try to remember whether I saw it then or later on. I did during the night see people throwing stuff, but you could not—you couldn't—not around us, there wasn't anybody [fol. 452] throwing. I know that for a fact.

Q. Could you see the Lyceum Building?

A. No, sir, you could see tear gas and all, coming out, and you could see lights and you knew it was there, but I don't guess you could see it.

Q. Could you see the lights from the Lyceum Building?

A. Not on the building.

Q. Did you ever see the Marshals?

A. Yes, sir, I did.

Q. Were they visible from where you were standing?

A. No, sir, they were not, unless they ran out. Now, I seen them during the night, I saw Marshals come out from there, and—at least I couldn't swear they were Marshals, but they were chasing students, and they would come out.

Q. Did you see any students hauling any brickbats from the new construction down there around Hume Hall?

A. Yes, sir, sometime during the night I saw students carrying bricks; I did.

Q. You don't know at what time?

A. No, sir, I don't. I couldn't say.

Q. Was it about—

A. I couldn't say the time. Excuse me.

Q. Was it about the time you and General Walker got [fol. 453] on the campus?

A. I don't remember seeing any students hauling bricks then. I just remember people there.

Q. Go ahead and take your seat. Now, after you and the General and the Deputy and these several others, as you have named, went up near the flagpole, on the way back did you see an encounter between General Walker and a minister?

A. Yes, sir, I sure did.

Q. I am sure you didn't mean to leave that out?

A. No.

Q. I just bring that to you. Now, did the minister implore General Walker in words, tones or sentences to help stop the rioting?

A. Yes, sir, he told General Walker, "You can stop the rioting." And General Walker said, "I have nothing to do with the students, I have no control over the students," was the words. "I have no control over the students."

Q. Did he say something to this effect, or perhaps verbatim, "I didn't come here to stop it. I wouldn't stop it if I could," or, "I couldn't stop it if I could."

A. He said—he may—well, I gave you what he said. I don't remember him saying he could or would or wouldn't. I remember distinctly he told the minister, "I have no control over the students." He told the minister that. He [fol. 454] was very polite.

Q. The minister had told him words to the effect, "General, they will listen to you, you can stop them"?

A. That is correct.

Q. And General Walker, according to you, said, "I have no control over them"?

A. That is correct.

Q. Now, after you had taken the stroll up toward the flagpole and returned again to the monument you say the students again urged him to make a speech, is that correct?

A. Yes, sir.

Q. How many students would you say were down there around the monument at the time this urging for the speech occurred?

A. I would say there were two hundred and fifty people in the crowd at the time he was speaking. I—sir, there was no way I could say for sure.

Q. Mr. Leman, I realize fully everything you say is an estimate. Nobody was counting them, nobody was trying to count them.

A. Right.

Q. I assume there was a considerable state of turmoil?

A. That's right.

[fol. 455] Q. I assume further it was impossible to remember everything that was said or done that night. Do you agree with that?

A. Yes, sir.

Q. But be that as it may, it was a group consisting of some two hundred or two hundred and fifty or less or more, and General Walker did agree to make a speech?

A. Yes, sir, he turned and told me that the students "... think Barnett sold them out." And he got up there and talked with the students.

Q. Well, now, give us the best you can—I realize it is repetition—what General Walker said in his speech to the students that night?

A. He said—he said, "There is no need for violence. Violence is not the answer."

Q. All right.

A. He said, "The troops—what you are doing here, in effect, we should be worried about Cuba." He said, "Barnett didn't sell them out." He said Barnett was a good Governor and ... that—he urged support for Barnett.

Q. He urged support for Barnett?

A. That is correct.

Q. Did he say who did sell them out?

A. He said that if anyone sold them out, according to the Governor's representative, which he had heard at the

[fol. 456] Courthouse, that it was the head of the Highway Patrol.

Q. Did he mention the word Birdsong?

A. Yes, sir, he did.

Q. Did he lean over and ask somebody who the head of the Highway Patrol was?

A. Yes, sir, he asked me.

Q. Was that after he had said "Barnett sold you out," and—

A. No—

Mr. Watts: Just a minute. I object to that. He did not say "Barnett sold you out." That is what the news report said. I object to that statement purporting to have been this witness' testimony. The witness testified he said, "Barnett did not sell you out." Mr. Gooch is asking the question "Barnett sold you out".

Mr. Gooch: Could I ask the question?

Mr. Watts: No, sir. I have no objection to you asking the question, but I object to you not staying in the record.

Mr. Gooch: Now, Mr. Watts—

Mr. Watts: Yes, sir.

The Court: Just ask the question.

By Mr. Gooch:

Q. Isn't it a fact General Walker first said, "Your Governor has sold you out," to which the crowd hollered, "No, no, no?" And that he leaned over to you and you said it [fol. 457] was not Barnett, it was Birdsong, and he straightened back up and he said, "Your Governor did not sell you out. . ."

A. No, Mr. Gooch, that isn't the way it happened.

Q. Wait until I finish,

A. Excuse me.

Q. "Your Governor did not sell you out, it was Birdsong."

A. That is not the way it happened, again.

[fol. 458] Q. All right. All right. I again say to you that I have the right to ask these questions.

A. Yes, sir, I realize that.

Q. Well, now I hope you will show me the same courtesy I am trying to show you. Wait until I finish my question.

A. Excuse me, yes, sir.

Q. Did he say words to this effect: "Keep up the protest"?

A. No, sir, I don't remember him saying anything about keeping up anything.

Q. Did he say, "You have every right to protest"?

A. He said, "You have a right to protest," he did say that, I remember it.

Q. But you say he did not say, "Keep up the protest"?

Mr. Watts: If Your Honor please, I object to that as repetition.

The Court: Overruled.

A. No, sir, he did not say "Keep up the protest."

By the Gooch:

Q. Did you hear him make a statement to the effect: "They," referring to the Marshals, "may run out of tear gas"?

A. Are you talking about in this speech?

Q. Yes, sir.

A. No, sir, I don't—don't at all.

Q. Did you hear him say—

[fol. 459] A. He didn't say that, sir, no, he did not.

Q. All right, did you hear him say during this speech, "Thousands are on their way"?

A. No, sir. No, sir, I—

Q. Did he say it?

A. No, sir, he didn't, Mr. Gooch. If he did, I definitely do not remember him, anything about that. I was pretty close to his speech.

Q. Did he say to those students who were around listening to his speech, "I want to compliment you on what you are doing here tonight"?

A. No, sir, I don't remember that either.

Q. Now you mentioned Reverend Duncan Gray on cross examination as an incident that occurred when he was walking back from the monument, or from the flag—the vicinity of the flagpole.

Did any other incident occur involving the Reverend Duncan Gray during General Walker's speech?

A. Yes, sir, it did.

Q. Tell us about that.

A. He, Walker, was talking to the students. I think he had just started, hadn't been talking very long. And Reverend Gray started walking up to—well, just pushing his way up to Walker, speaking. I don't remember what he was saying but he was speaking.

[fol. 460] And Walker said, General Walker said, "Your minister wants to speak," or something like that.

And then somebody pulled the minister away from the, away from the group and then I saw the minister and this fellow just move on back, away from the crowd. And Walker continued his speech.

Q. Is that all that occurred?

A. Regarding the minister, is that—

Q. Yes, sir.

A. Yes, sir, that's all I remember.

Q. Did you ever hear General Walker say, "Here is an Episcopal minister that makes me ashamed I am an Episcopalian"?

A. Yes, sir, I heard something about him—I did hear him say—the minister had just said something. I don't remember what he said. And it was something about bringing in the church.

And I don't recall whether this was the earlier point or during the speech. It may have been both—no, it couldn't have been both.

But I do remember the minister using the, bringing religion into it, into this Oxford thing.

He somehow said that religion or—well, he brought up the subject of religion and Walker did say that, "I am

ashamed of being an Episcopalian," or "you make me ashamed—" or something like that, I don't know.

[fol. 461] The question was said, it surely was.

Q. Now after General Walker had finished his speech, what did General Walker do?

A. Moved away from the group that was standing around there and talked to some people for a period, for a while.

Q. How long a period?

A. Oh, I would estimate 10 or 15 minutes.

Q. Then what did you do?

A. Then we decided to get, go up and look and see what was going on up front and we walked up towards the west, walked west.

Q. How far west did you walk?

A. I would say up to right up in here about (indicating).

Q. Now you have indicated on this second westward trek a point, I believe, about half-way between the flagpole and the edge of the street in front of the Lyceum Building?

A. I indicate a point about right in here, sir, about right in here (indicating).

Q. All right.

A. I would say about 30 feet or so the other side of the flagpole.

Q. About 30 feet past the flagpole and west of the flagpole?

A. That's correct.

Q. Sir? Had you finished?

[fol. 462] A. That's correct, yes, sir.

Q. Now at that time who was with you and General Walker?

A. There was two or three other individuals who I do not know who they were or remember them, and myself.

Q. Was the Deputy Sheriff there?

A. No, sir, not this time, he was not there.

Q. Were any of the—

A. At least I don't remember him at all.

Q. I'm sorry.

A. Excuse me.

Q. Now at the time you went up there past the flagpole, just you and the General and one or two or three individuals, did anybody have any sticks or stones in their hands?

A. Nobody with us did at all, sir.

Q. Was there anybody following along behind you and General Walker and the two or three that you didn't know?

A. There were people all over the campus. We were not in any large group at all. There was nobody behind us—maybe you could walk back 50 feet and there might be some people but we just walked, three or four of us walked up to the front and walked on back.

Q. And nobody of a large crowd of 15 or 20 or 500 or what-not weren't following you?

A. No, sir, Mr. Gooch, they surely weren't.

[fol. 463] Q. Now I believe you said that the General made one other trek up to the—

A. Yes, sir, we walked up the front during the peace conference.

Q. Well, now who led the peace conference or was there a leader?

A. Well, there was one student I saw, saw him standing with some kind of, waving something, I don't remember what it was, some kind of flag, and so if you want to call him the leader, maybe he was the leader.

Q. I don't know whether he was or not. I was just asking if somebody led them.

A. Well, sir, I don't know that there was any leader at all but a bunch of the students were hollering, "Peace, peace," or something, or "peace conference," and they advanced up after, as the Marshals quit firing and everything and everybody quit, anybody—everybody stopped throwing and there was a group of students up front. I would say a hundred or something like that, gathered around during the peace conference.

Q. Where was General Walker at the time of the peace conference?

A. Standing behind the students.

Q. Just with his arms folded, I assume—

A. Just standing there.

[fol. 464] Q. —was the pose. And was the Deputy Sheriff with him at that time?

A. No, sir, I don't think he was.

Q. Was anybody with him but you?

A. There was two or three other people. We were talking to—all through the evening, sir, we would talk to different people, so I'm sure there was somebody with him.

Q. Did you hear any of the peace conference talk?

A. No, sir, I couldn't hear it.

Q. You couldn't hear a thing that went on?

A. No, sir, you could tell they were talking. I could hear the voices but I couldn't tell what they were saying at all.

Q. And after you had participated, or after you had gone up there—I won't say "participated,"—had—after you had gone up there, you came back down near the monument and remained there the rest of the evening?

A. That's correct, we—after that, sir, we came back and we remained the rest of the evening in this area and in here (indicating), this area in here the rest of the evening—four hours, in fact.

Q. So you stayed there on that campus that night, you and General Walker, from around 8:45 until about 1:30 or 2:00, I believe you said—

A. That is correct. That's correct.

[fol. 465] Q. —and just stood there milling around on the campus?

A. That's correct. That is absolutely correct.

Q. Now you do recall that at the interview in Jackson before you proceeded to Oxford, that General Walker at that time was urging those who were listening to him to stand behind Governor Barnett?

Mr. Watts: Excuse me. Object to it as purely repetition.

The Court: Overruled.

Q. Go ahead.

A. Well, sir, the points that stand out in my mind that Walker was urging were, one, they opposed the use of troops in this situation and that this—and, also, support for the position taken by Barnett, of legal and Constitutional resistance to the situation, to the forced integration at Ole Miss.

Q. All right. Again I ask—it is repetition, but I want an answer—

A. Yes, sir?

Q. —that he did make his position clear at Jackson before he went to Oxford, that he wanted his hearers as well as himself to support Governor Barnett, is that correct?

A. He said he supported and urged people to support Ross Barnett.

[fol. 466] Mr. Gooch: That's all. Thank you.

The Witness: Support the position of Barnett.

Mr. Gooch: That's all.

The Court: Any redirect?

Mr. Watts: Very short.

Redirect examination.

By Mr. Watts:

Q. Mr. Leman, during the course of that entire evening, what was the longest period that General Walker was ever out of your sight?

A. About a minute, and I knew where he was then.

Mr. Watts: I believe that's all.

Recross examination.

By Mr. Gooch:

Q. At any time—wait just a moment. One more question: At any time that you were going in a westerly direction from the monument toward the Lyceum Building, was there

any, ever any tear gas fired at the group, however small, of which you were in?

A. Sir, there was tear gas anywhere in that area, firing everywhere. I saw them rolling down on the ground, I saw them—in fact is, they were firing all the way back to the crowd. At times they were firing all the way back to the crowd back by the monument, coming down there. People would have to move to get out of the way.

[fol. 467] Q. Was that happening at the time you and General Walker got on the campus?

A. Yes, sir, sure was.

Mr. Gooch: That's all. Thank you.

The Court: I'm going to excuse this witness.

Mr. Watts: Just a minute. Let me ask just one more question. It's always bad luck to. . .

Further redirect examination.

By Mr. Watts:

Q. Mr. Leman, did you during the course of that evening and the entire evening, was General Walker ever out in front of a crowd with no one between him and the Marshals?

A. No, he never was. He never was.

Q. Did he ever, or, so I won't be in a position of leading you, tell us what his gait was as he walked around that area?

A. A very slow walk.

Q. Did he ever get out of that slow walk?

A. No, sir, he did not.

Mr. Watts: That's all.

The Court: I'm going to excuse this witness.

Mr. Watts: Yes, sir, I would like to have him excused.

The Court: You are excused. We will recess until a quarter of 11:00. Keep your seats, please, in the audience until [fol. 468] after the jury has left the courtroom, and be back in your seats at a quarter of 11:00.

(15-minute recess.)

Mr. Watts: Call Mr. Holland, please.

If Your Honor please, at this time we would like to present a deposition. This is the deposition of a witness, Joe Ford, taken in Oxford, Mississippi, March 12, 1964, by agreement of the parties, and the deposition was attended by Mr. Gooch and myself.

With the Court's permission, Mr. Address will read the answers and I shall read the questions.

I assume it is understood that the witness was sworn?

I notice I didn't ask him.

The Court: Yes.

JOE FORD, testified by deposition as follows:

By Mr. Watts:

Q. What is your name?

A. Joe Ford.

Q. What is your business?

A. At the present time I am an automobile and tractor dealer.

Q. Mr. Ford, have you been Sheriff of Lafayette County?

A. Yes, sir.

[fol. 469] Q. Were you the County Sheriff on September 29th through October 2nd, 1962?

A. Yes, sir.

Q. Did the disturbance incident to one James Meredith at the University of Mississippi occur while you were Sheriff?

A. Yes, sir.

.

Q. Now Mr. Ford you were Sheriff between that period of time?

A. Yes, sir.

Q. And did an incident occur at the University of Mississippi between that period?

A. Yes, sir.

Q. Did you have occasion between these dates to become acquainted with former Major General Edwin A. Walker?

A. Yes, sir.

Q. Where did you first see him?

A. In the Sheriff's Office.

Q. Would you outline into the record, please, sir, the nature and extent of that conversation and acquaintance?

A. It was on a Sunday morning, I am not positive, but it was somewhere between 7:00 and 8:00 o'clock, General Walker came into the Sheriff's Office. He introduced himself. I don't recall the young man who accompanied him, but I asked him his business in Oxford with reference to [fol. 470] several phone calls that had come into the Sheriff's Office in connection with General Walker—

Mr. Gooch: Now if the Court please, we object to the rest of the testimony, as to what General Walker may have said.

The Court: The rest of that sentence?

Mr. Gooch: Yes, sir.

The Court: Sustained as hearsay.

A. —I referred him to the telephone calls that had come to me, some of them made statements to the effect that they had been asked to come to Oxford. I questioned General Walker with reference to whether—his plans in Oxford—

Mr. Gooch: To which we object.

Mr. Watts: Just a minute.

Mr. Gooch: Which we object to the rest of the answer.

The Court: Sustained.

A. —I informed him since he was here as an observer—

Mr. Gooch: I object to that, if the Court please, as to what he may have told General Walker. It's hearsay so far as this defendant is concerned.

The Court: Sustained.

Mr. Andress: This is the witness himself, Your Honor, testifying as to what he said.

The Court: Let me read the rest of the answer. Let's [fol. 471] see. I will overrule it and permit that.

Mr. Gooch: Note our exception.

A. I informed him since he was here as an observer that I had no excuse to ask him to leave but that we wanted no one here that would cause any disturbance or any feeling of emotion that would call disturbance. He assured me that his activities here were of his own personal interest and simply as an observer.

Q. Did you see him again after that incident on Sunday morning of September 30th?

A. I did.

Q. Would you outline that meeting for us, please, sir?

A. That was approximately 8:00 o'clock on the same date, Sunday night, in the courtroom in the Lafayette County Courthouse.

All county officers who were here in connection with the University situation were asked to meet in the courtroom. General Walker was present at that meeting. He did not address the members of that meeting. He was present, however, and was on the courtyard lawn after the meeting. I didn't make any personal contact with him.

Q. Did someone address the meeting of the county officers in the courthouse?

A. Yes, Judge Moore from Jackson.

Q. Would you remember in substance what he told the [fol. 472] group?

Mr. Gooch: To which we object. It would be hearsay.

The Court: Sustained.

Q. Had there been a substantial group of local sheriffs and law enforcement officers assembled in Oxford?

A. I don't know the exact number but at one time or another during the course of those few days I was informed that practically every sheriff in Mississippi was here.

Q. Were there a substantial number of these peace officers assembled within the courthouse that night?

A. They were, I don't know the exact number, there was a good many of them.

Q. Was that the last you saw of Walker then?

A. Yes, sir.

Q. Did you see him again at any time while he was in or around Oxford?

A. No, sir, I did not.

Mr. Watts: I believe that's all.

Mr. Gooch: No cross.

Mr. Watts: All right.

Turn now over to the next deposition here, David Channell.

DAVID CHANNELL, testified by deposition as follows:

[fol. 473] Direct examination.

By Mr. Watts:

Q. What is your name, please?

A. David Channell.

Q. Your residence both on campus and at home?

A. Odom B. Dorm on campus, and 740 McDowell Road, Jackson, Mississippi, at home.

[fol. 474] Q. Who are your parents?

A. Mr. and Mrs. C. E. Channell.

Q. Your age?

A. I am twenty.

Q. Are you a student in Mississippi University?

A. Yes, sir.

Q. What school and what class?

A. I am in the School of Commerce and I am a junior.

Q. Were you at school in September of 1962?

A. I was.

Q. Did any unusual incidents happen on the campus that night?

A. Yes, sir, there was a very unusual incident, one which we were not accustomed to. We had what you might say was a riot.

Q. In what area did that take place?

A. It took place in front of the Lyceum Building, the place commonly referred to as the Grove.

Q. Were you present during the course of that incident?

A. Yes, sir, I was.

Q. When did you first come on the campus that night and realize there was something unusual taking place?

A. We were coming back from the football game in [fol. 475] Jackson that week-end and on the way back we had a little car trouble and I didn't get back until about 8:00 o'clock. We knew that there was something wrong because we were listening to reports on the radio.

Q. What was the general nature of those reports?

A. They said there was a Negro admitted to the University of Mississippi, that he was on the school grounds. They said that tear gas had been fired and there was a riot going on.

Q. When you arrived on the campus where did you go?

A. I walked straight up to the Grove here just to see what was going on.

• • •

Mr. Watts: We marked there Exhibit 1, if Your Honor please, a plat almost identical to the one on the Board, except much smaller. Will it be permissible if I step over by the plat and point out, Mr. Gooch, the same locations on this plat?

The Court: Yes, sir, if they are the same.

Mr. Watts: Yes, sir. Mr. Gooch has a copy of it, I am sure.

• • •

(Continuing to read from deposition.)

Q. Now, David, directing your attention to Exhibit No. 1, which is a scaled plat of the University of Mississippi [fol. 476] area, is this the Grove in the center of the area?

A. Yes, sir, it is.

Q. Now, orienting it, the top is to the north, and the left is to the west. From which direction did you approach?

A. We came down University Avenue and we had to hitchhike since the car wouldn't run, so this boy let us off right here at the bridge. He had to get his car across the campus and he lived in the Phi Delta Theta House, and he let us off right here at the corner of University Avenue right across the bridge.

Q. Then where did you go?

A. We proceeded to go on up into the Grove.

Q. Was there a substantial crowd in the Grove?

A. Yes, sir, there was. There was a crowd all the way along University Avenue and the Grove.

Q. Could you give us anything like a rough estimate of the size of that crowd?

A. I couldn't tell you exactly. I imagine it would be around 3,000 people at least.

Q. Had tear gas been fired?

A. Yes, sir, it had.

Q. Did you mix on with the crowd?

A. Yes, sir, I walked on in and started to talking to some of the boys and asked them what had really happened, [fol. 477] and the story about it. All we could get was radio reports and some of the announcements were not too positive, but we did know that tear gas had been fired.

Q. How close did you get to the ring of Marshals that surrounded the Lyceum Building?

A. I couldn't get very close. I guess we just walked right up into here.

Q. By "here" you are pointing into this circle that is called the Grove?

A. Yes, sir, next to the flagpole.

Q. And in the center of the circle as appears on this Exhibit No. 1, there is a cross between two sidewalks?

A. Yes, sir.

Q. And there is a circle within that, and is that what you identify as the flagpole?

A. Yes, sir, that is the flagpole.

Q. I wish you would tell us what you saw when you got up in that area?

A. When I got up in that area there were small groups of students and they were charging the Marshals, throwing rocks, but they were all spread out. There was a group over here—

Q. By "here" you are pointing to the southwest?

A. Yes, sir. It was very sporadic. They would run up there and throw rocks and run back.

[fol. 478] Q. Did you stay there all during that time, the intervening time that followed that?

A. Yes, sir, I did. I just milled around and went over to the Y and talked to some people over there.

Q. I wish you would give us a narrative running account of everything you saw, or everything you heard, and what occurred?

A. As I said, I arrived at about 6:00 o'clock and I walked up into the Grove and started talking to some boys to see what had really happened. I guess I went over to the Y and talked to some boys over there. I met a boy from South Carolina that was up here and I talked to him. He told me a girl had been killed, so I walked on back down towards University Avenue.

Q. Was that eastward?

A. It was going this way. The Y is here.

Q. You are pointing—I will have to orient you here, David. The Confederate monument is on the east side of the Grove and the Lyceum Building is on the west end of the Grove. It will help us when we read this in Court if you can use points of the compass and directions.

A. All right. We walked eastward. I was standing around by the Confederate monument and I saw General Walker walking up. He was with a short man, it was a Deputy Sheriff or a Sheriff, I don't know which, and I as [fol. 479] sumed he was from Texas. He came up and he was standing around and there was a whole bunch of people gathered around General Walker. He started talking.

Mr. Gooch: Wait just a minute. We object to that next answer, if the Court please. A conclusion.

The Court: I will admit it.

Mr. Gooch: Not res gesta.

. . .

A. Everybody got mad at him because he wanted to put the riot down. He said violence was no way to do this thing and so everybody got mad at him. Then these Episcopal ministers, I assume it was Duncan Gray and Wofford Smith, they climbed up on the monument, the Confederate statue, and they started implying that the people out here were very low class people. That upset a few people so they started to pull them down. They got them away right quick and it was the Deputy Sheriff who helped get them out of there that was with General Walker. Then General Walker told us, he said we ought to be concentrating our efforts in Cuba instead of against our own people. He continued to say there was no sense in having any violence, that constitutionally you could protest but not with violence.

Some students asked him to lead us and he said, "No." [fol. 480] He said, "I can't take part in a violent demonstration." He said that wouldn't be right. Later he walked on up into the Grove and I walked with him, I guess there was about five or six students that went with him. He walked up into the Grove and looked around, he and the Deputy Sheriff and the students. He then turned around and went back out. He walked out of the Grove and went back down to the Confederate monument, I think not exactly to the Confederate monument, he came down and stood across the street over here in front of the Biology Building and Hume Hall. It is on the east part of the campus. He stood there and this boy, I can remember this real well, this boy from Natchez, Mississippi, his name is James Dykes, he had been shot in the leg. At the present time, or then, he was attending Co-Lin Junior College in Wesson, Mississippi, and the only reason I know who the boy was was this boy who was with me was from Natchez

and he pointed him out to me and told me who he was. He came up and two boys had to carry him, one under each arm. He was carried up to ask General Walker if he could put him on a white stallion and lead us and General Walker at that time shook his head like that (indicating) and said, "No". He said that it wouldn't be right.

Q. Go ahead with your narrative of what occurred after you had this talk with this boy. Was this statement of [fol. 481] putting him on a white stallion, was that stated in jest?

A. At the present time emotion was running rather high and the boy couldn't walk, his leg had been shot and there was blood all over his pants leg. I imagine he was shot by birdshot, or maybe some form of shotgun. They took him on off and General Walker stood there and people kept talking to him and asking his views, his political views and so forth.

Q. Now, up to that time had he made any move at all toward the Lyceum Building, or toward the Marshals?

A. Yes, sir, he walked on into the Grove at the time that I walked with him and some more students did, he walked on into the Grove about halfway or three fourths in there and he just stood around looking and then he turned and we walked out. The only reason I went with him was just to talk to him because I had heard a lot about General Walker.

Q. Did he at any time get out of a normal ordinary walk?

A. No, sir, he never did. In fact, he was walking pretty slow, if you ask me, for his size.

Q. To identify him, did he have on a rather large white hat?

A. Yes, sir, he had on a large Stetson hat and I believe he had on a beige suit. I believe he had on a beige suit, [fol. 482] but I remember that white hat better than anything. He was with this short Sheriff or Deputy Sheriff who was accompanying him.

Q. Back at the time you first arrived on the campus, do you think sometime shortly after 8:00 o'clock, and between that time and the time you saw General Walker, were you out in the area of the Grove back and forth all the time?

A. Before I saw General Walker?

Q. Yes.

A. Yes, sir, I was.

Q. Were you in a position where if there had been a mass charge of as many as 1,000 people or even 500 against these Marshals that were led by three individuals out in front of them, were you in position to where you would have had to have seen it?

• • •

Mr. Gooch: To which I object as a conclusion on the part of this witness.

The Court: Overruled.

• • •

A. Yes, sir, I would have seen it.

Q. Did anything of that kind occur at all?

A. No, sir, it did not.

Q. First, did anything like that occur prior to Walker's [fol. 483] speech on the monument?

A. No, sir.

Q. And did it occur then after Walker's speech on the monument?

A. No, sir.

• • •

Mr. Watts: I believe the rest of it is repetition. We will waive it. Cross examination?

Mr. Gooch: On page 13 of the deposition, question.

• • •

Q. And you saw General Walker almost immediately after you got on the campus?

A. No, sir, I didn't. I would imagine it was about forty-five minutes to an hour later. I can't place time after that

because I had no radio and no way of knowing the time. I didn't have a watch.

. . .

Mr. Gooch: On page 14, the first question on the page.

. . .

Q. And you did see groups from that big crowd of people charge the Marshals or go up toward the Marshals and throw bricks and stones, or did you?

A. Well, there were not 3,000 people taking part in what was going on there. As I said, there was a large group of students lining University Avenue, students and towns-[fol. 484] people. In the Grove, itself, and around University Circle, I could not estimate that because it was dark but it wouldn't be anywhere near 3,000 people there.

Q. Well, give me your best estimate on that?

A. Well, I would say 1500 or 2,000.

Q. In the Grove itself, to be specific now?

A. To be specific exactly in the Grove there wouldn't be more than 500 or 600 people. You see, the streets were lined in front of the Y and all around the Engineering Building and the Chemistry Building.

Q. Did you see the Marshals fire any tear gas?

A. Yes, sir, I did.

Q. You say that some had been fired before you got there?

A. Yes, sir, it had.

. . .

Mr. Gooch: Now, on page 18, at the one, two, third question.

. . .

Q. After General Walker had something—had said something about a peaceful protest, according to you, where did he go then?

A. He stayed around and he carried on a conversation with some of the students and the townspeople who were there at the time.

[fol. 485] Q. Then where did he go?

A. He walked on up into the Grove. He and the Deputy Sheriff walked west toward the Lyceum.

Q. The Deputy Sheriff?

A. And some more students.

Q. Did anybody go with him?

A. Yes, sir, I for one went with him.

Q. About how many followed him?

A. I guess there were maybe five at the most, four or five.

Q. How far did you go?

A. He walked about half way or three quarters of the way up into the Grove.

Q. What did he do?

A. He just looked around and then he walked back out.

Q. Did he say anything else there?

A. No, sir, not a thing.

. . .

Mr. Gooch: On page 23.

. . .

Q. Did you ever hear anybody ask General Walker to attempt to stop the violence?

A. No, sir, no one asked him to stop the violence.

Q. Nobody asked him at all?

[fol. 486] A. Not a soul. The people there, I assume, were for what was going on and General Walker was the only one against it. He tried to tell the students that they would accomplish nothing.

. . .

Mr. Gooch: Down at the bottom of the page.

. . .

Q. Did you consider General Walker to be a public figure?

A. Yes, sir, I would.

Q. Would you say he was a national public figure?

A. Yes, sir, I would.

. . .

Mr. Gooch: On page 26, one, two, three, four, the fifth question.

Q. Then, General Walker, according to you, never at any time did he climb part of the way up on the Confederate statue to address the group?

A. If he did, I didn't notice it. I am sure he didn't.

Q. You are positive he did not?

A. No, sir.

Q. In connection with the talk that you heard Walker make?

[fol. 487] A. I am not positive that he didn't climb upon that statue, he could have and I didn't notice it.

Q. Well, you were there within seven feet of him?

A. Yes, sir, but at the time I couldn't notice if he climbed up there or not. He might have stepped up on the first step, but if he had mounted it real high, I would have noticed it.

Mr. Gooch: On page 27.

Q. Did you ever hear General Walker mention the name of Birdsong?

A. Birdsong?

Q. Yes.

A. No, sir.

Q. Would you say he did not say anything about Birdsong?

A. Who is Birdsong?

Mr. Gooch: On page 28, the fourth question.

Q. I believe you said earlier in your testimony that there was a riot situation on the campus?

A. That is the impression I got. They said that tear gas had been fired and the students were running around.

[fol. 488] Q. Did you observe a riot condition when you got there?

A. There was a lot of fighting going on.

Q. Were there any charges towards the Marshals by anybody?

A. Yes, sir, there were sporadic charges by little groups of people all over the campus, from behind the Lyceum and the sides.

• • •
Mr. Gooch: The third question on page 29.

• • •
Q. Did General Walker go up to where the fire truck was?

A. No, sir.

• • •
Mr. Gooch: The last question on page 30.

• • •
Q. Do you know what time General Walker left the campus?

A. No, sir, he was gone about 11:00 o'clock, I am sure, but I didn't know what time it was. As I said, I lost track of time.

• • •
Mr. Gooch: On page 36, the third question from the [fol. 489] bottom.

• • •
Q. Then after he made that talk where did he go?

A. After he made that talk?

Q. Yes.

A. Well, he went on up into the Grove about halfway to three quarters.

Q. To the flagpole?

A. Yes, sir, to the flagpole.

• • •

Mr. Gooch: That is all I have to offer.

Mr. Watts: Turning to page 27 of Mr. Gooch's cross examination where the question was asked, "Would you say he did not say anything about Birdsong?" And the answer: "Who is Birdsong?" And continuing to read;

Q. My information is he was the head of the Mississippi State Patrol?

A. I think he mentioned the Highway Patrol but I forgot the guy's name.

Q. What did he say about the Highway Patrol?

A. People at that time were saying that Governor Barnett had sold us out and General Walker said, "No, it wasn't, to the best of his knowledge, it was Birdsong or the [fol. 490] Chief of the Highway Patrol." I assume it was Birdsong.

Q. He said Birdsong sold them out, is that what he said?

A. I don't know how he put it, that the Governor of Mississippi is a good man and he would not turn against his people, and he said the Chief of the Highway Patrol was the one that let the Marshals on the campus. That is the way it went.

Mr. Watts: Now, on page 36 he read the question: "To the flagpoles?" And the Answer: "Yes, sir, to the flagpole," and continuing:

Q. Then he came back?

A. Yes, sir.

Q. Then what did he say?

A. Then what did he say?

Q. Yes.

A. He just stood around and people were asking him questions and that is when Gray and them got up there.

Mr. Watts: That is all.

Mr. Gooch: Nothing further.

[fol. 491] CECIL HOLLAND, called as a witness by the Plaintiff, having been first duly sworn, testified as follows, to-wit:

Direct examination.

By Mr. Watts:

Q. Your name, please, sir?

A. My name is Cecil Holland.

Q. Your residence?

A. Bathesda—Chevy, Chase, Maryland.

Q. Your Business or profession?

A. Newspaper reporter.

Q. Tell the jury what paper you work for, Mr. Holland.

A. The Star, Washington, D.C.

Q. How long have you been in the newspaper business?

A. All my life.

Q. Would it be a personal question to ask you how long that's been?

A. It's been about 30 years. In business itself.

Q. What school, journalism school, were you a graduate from?

A. None.

Q. How did you get into the profession?

A. Well, I attended the University of Chattanooga and took a part-time job as a Sophomore there and—

Q. Stayed on in it?

[fol. 492] A. Stayed on in it ever since, except for Army service.

Q. What branch of the service were you in?

A. Army Air Force.

Q. And how long have you worked for the Washington Star?

A. Off and on since '38, 1938. I left twice and went back.

Q. Were you directed by your paper to proceed to Oxford, Mississippi, any time during the latter part of September, 1962?

A. Yes, sir.

Q. Did you go there?

A. Yes, sir.

Q. I wish you would just tell the jury, Mr. Holland, please, sir, in your own words, from the time you arrived at Oxford, what you saw, what you heard, what you did and what occurred?

A. Well, I arrived there late on a Friday evening. I had come, I had left Washington Friday afternoon and had an assignment before I got there and I rented a car in Memphis and drove down there.

And I got there late and could not get a place to stay in Oxford, so I drove down to Waterford and had a motel room there.

[fol. 493] Saturday I went back to Oxford. I worked there and finished my story and then went back to Waterford, where I spent the night.

And Sunday morning I got up fairly early and came up, had breakfast, and visited the campus, heard about some troops being brought in at a place I forget now somewhere about 15 miles out of town. We visited that place.

Later went back to the campus and couldn't get on and—because the State Patrol had thrown up barricades.

Later we went out to the airport and were there when the Marshals landed.

Eventually back to the motel and then back to the campus where we waited from 5:30 or 6:00 until we were admitted to the campus grounds at about 7:00.

We stayed there—we walked up toward the Lyceum Building, trying to find someone to talk with particularly from the Justice Department.

We stood out in front for quite a while. Mr. Guthman came out, he said he had one telephone call—

Mr. Gooch: We object to what Mr. Guthman said.

Mr. Watts: Don't say that.

By Mr. Watts:

Q. Who was Mr. Guthman?

A. He was a public relations man for the Justice Department.

Q. Where did he come out of?

[fol. 494] A. He came out of Lyceum Building and we asked him for a chance to talk with him.

Q. Well, now was this daylight or dark?

A. It was dark by that time.

Q. All right, go ahead and tell us what happened, what you saw.

A. Well, while waiting for Mr. Guthman to return, the Marshals had us move—there were a dozen or more reporters gathered out in front. The Marshals had us move around to the side.

Q. Excuse me. Were there any AP reporters among them, or did you know—

A. I don't know. Could possibly have been. I just don't know.

Q. All right, go ahead.

A. I knew some that I had worked with at other places and I know we were together part of the time but there was a milling back and forth and the crowd was—the group of reporters were changing all the time.

Q. You say there were eight or ten of those reporters?

A. Oh, at least that. I made no number of, count of them. We were—

Q. Now, Mr. Holland, so we will orient yourself and the jury, would you step down here just a minute?

North, east, west (pointing) the Confederate monument, [fol. 495] the Lyceum Building?

A. Yeah.

Q. This area is known as "the circle". Could you take this ruler and point out the position where you and this group of reporters were?

A. We were directly in front of the Lyceum Building right there (indicating).

Q. That would be east?

A. Yes, east.

Q. Yes, sir. All right, sir. Take your seat.

A. The Marshals would not let us go through and we were waiting for someone to talk to there because we didn't know what was going on.

Q. If it will help you, stay there at the chart.

A. Well, while we were standing there, the Marshals asked us to move over to the side.

Q. Yes, sir.

A. And we were moved over to this side of the building, which I believe would be the south, I believe so.

And I stayed right in that—some of the reporters went over there (indicating). Who they were, how many, I don't know, because we more or less dispersed then and it was dark and people were milling around and we moved over here and stayed there (indicating), at least for quite a while.

Q. Now for the benefit of the record, "here," would be [fol. 496] just south of the Lyceum?

A. Yes, it was right in this area here (indicating).

Q. Yes, sir.

A. I believe it led down to a gym or some building down this way, I don't know (indicating).

Q. All right, sir. Continue then with your account.

A. Well, we stayed there and I was—I was there when the—I had moved up to this corner as near in front of it as I could get on the outside of the Marshals and I was standing there when the—simply because I wanted to—didn't want to miss Mr. Guthman—when the first tear gas started.

Q. Describe that incident to us in as much reality as you can remember.

A. Well, I was standing back here at one point and when the order came for the Marshals to don their tear gas masks, and I moved back somewhat—

Q. Do you remember that order?

A. Just the call, "gas," is all I could distinguish. And it came from—it sort of seemed to me to be picked up and carried around the building, I don't know.

And I was there when that call came. And they took out the gas cannisters and then the call came, was for them to—I forget the, what the technical name was, but anyhow, they returned the cannisters to their pocket and [fol. 497] took off their masks.

And I moved back up here for the same reason that I said: I was trying to see when Mr. Guthman would come out. I stood there and was standing there (indicating), when the gas was actually fired.

Q. Tell us about it.

A. Well, there was just a sudden order and gas flew and I turned immediately and retreated down this way (indicating).

Q. Now where were the Highway Patrolmen when that order came?

A. Well, there was a large group at the scene—I had walked straight up and down this way (indicating) and there was some groups, some parts of them came this way and some had moved, as best I could tell, into this direction.

Q. Where were the students?

A. Well, into the trees where students had been. I couldn't see at that particular time and I moved up behind them simply to keep an eye on the entrance of the Lyceum Building.

Q. Now when gas was fired, was there only one round or was it a salvo-type of operation?

A. Oh, there was quite a bit of gas fired there. I don't know how many rounds or what it was.

The wind seemed to be blowing from this direction [fol. 498] (indicating), and it seemed to carry it right back towards us where we were.

Q. Yes, sir. What occurred then?

A. Well, there was sporadic firing from time to time. Sometimes heavy, sometimes not so heavy; sometimes we

would be driven away back down this way (indicating) to get out of the way of the gas.

Q. What happened to the highway patrolmen when the gas was fired?

A. Well, some of them, they withdrew, too, and some of those that had come down in front here came out with tears streaming from their eyes, just as—well, as anyone in the area that caught any of this gas. They did not have gas masks on when I saw them.

Q. And from that time on, Mr. Holland, what was the activity of the students or the Marshals, whoever they were, out in front of the Marshals?

A. Well, I couldn't say who all was out in front because it was somewhat dark and this tear gas, the clouds were—

A. Yes, sir.

Q. Going back and forth. More of the activity seemed to be on this side than over here (indicating), though at times there was some activity down this direction (indicating).

Q. What do you call "activity"?

[fol. 499] A. Well, there would be cries and shouts and then the Marshals would move out and throw some tear gas and then they would come back and there might be a little lull and then it would be resumed.

Q. Did you ever see a generalized movement or mass charge of a large number of students?

A. From where I was and with the tear gas that was there, I could not distinguish anything because I quickly got a lot of tear gas in my eyes.

Q. Yes, sir.

A. And I just—I had to go way back down here (indicating) and then I would come back and you would catch some more and then you would move back again because—and it was fairly dark on there and the lights, there was no general lights and I could not tell what was happening down in this area. I couldn't see any movements of people except small groups maybe that come up in this direction this way (indicating).

Q. And what would those small groups do?

A. Well, I could see people there and then I might see the Marshals move out. I couldn't see what they did because I kept back on this side (indicating).

Q. Did you see any rocks, bricks, bottles, missiles or anything of the kind in the air, flying around?

A. Well, I didn't only see them, you could hear things [fol. 500] hitting places and I don't know exactly what they were or what else because—

Q. Were there other newsmen around you?

A. At that time, no, because I had lost track of all of them. I had moved up and down and I don't know what happened to them, only by hearsay later as to what—

Q. Well, don't tell the hearsay. Go ahead and tell us what happened, just draw us a picture.

A. I stayed in this area back down in here for quite a while, must have been an hour or more (indicating).

Q. Yes, sir.

A. Just how long, I am unable to say because—and I consulted my notes the next day, I could not find just what the timing was in this because—

Q. As a reporter, did you keep notes of your activities?

A. I didn't attempt to at that time.

Q. I see. Go ahead.

A. I finally decided that I wanted to come around and get on this side (indicating) and I didn't think it was quite wise to move down this way, come from this area, I didn't, and being a civilian I didn't know what—I just couldn't tell what was going on, so I—

Q. Could you estimate the time from the period the first gas was fired until you decided to move and did move?

A. It was an hour or more. Could have been an hour [fol. 501] and a half but I'm inclined to think it was something a little less than an hour and a half, I—

Q. Yes, sir, but—what would you fix as the time when gas was fired?

A. Well, I know that pretty well because it was right—I kept that time because we were also interested in check-

ing it later because it was about the time the President was speaking. It might have been a minute—I don't believe there was more than a minute or two's difference in the time, and I think he was supposed to be speaking at 10:00 o'clock, Washington time. I mention that only because I kept my watch on Washington time.

Q. What would that have been local time?

A. 8:00 o'clock, I believe, at that time.

Q. And you think it was within a minute or so—

A. I think it was very close. I couldn't say definitely.

Q. All right, go ahead.

A. Well, eventually I decided that I wasn't, not accomplishing anything here. I wasn't—I was unable to get into the building.

Q. Yes, sir.

A. And I came back down this way and I think somewhere down here (indicating) is the gate, I'm not quite sure where it is. But I asked the highway patrolman there which was, how could I get out to the, I think it was, high-[fol. 502] way 6, I believe, that ran out to the airport.

Q. Yes, sir.

A. It went on that side of University (indicating). And he said, "It's down there," and about that time some man alone in a car came by and I asked him if he would give me a ride and he was kind enough to do so.

Q. Could you identify that individual?

A. I can't by name. He told me his name. He was an English instructor or some instructor. I won't even be sure it was an English instructor now.

Q. With the college?

A. With the college.

Q. Yes, sir. Go ahead.

A. Well, at any rate, he said he would like to see what was going on, on this side, so somehow he brought me in something around like this (indicating) and we came out somewhere in an area—I don't believe we were down this far. We could have been because we made a left turn and turned back up the, this driveway that goes—no, wait a minute. I have got it wrong.

Came back around in this way somewhere (indicating). I don't know where, quite how we came in because I was not familiar with the campus at that time.

Q. Yes, sir.

A. Then we drove to turn back up this way (indicating), [fol. 503] and just about the time we did that, there was a, quite a mass of students. I can't estimate the number but—

Q. Yes, sir.

A. —the car was surrounded and there must have been some activity up here that I don't know what it was.

[fol. 504] Q. Could you see that far from where you were?

A. You could see some activity going on but I couldn't tell what it was. Of course, the Marshals would move out that way with a very heavy barrage of tear gas.

Q. From the time you drove up there in that car could you see well enough toward the Lyceum to make out the form of specific Marshals?

A. I could see individuals and I assumed they were Marshals because of their helmets and jackets.

Q. That is you could see shapes and forms?

A. Shapes or forms, yes, sir, but there was quite a barrage of tear gas that came at that time, and this man who picked me up said, "I want to get out," and I said, "I do too," so he took me out and somehow, I think we came back down here (indicating). He brought me down University Avenue and let me out at the corner. I am not sure whether it is Main Street or not. I believe it is about one block further from the Ole Miss Hotel. I had left my car at the Ole Miss Hotel and I wanted to pick it up.

Q. All right. Very briefly, after you left the campus, just go ahead and tell us what else you saw?

A. Well, since I had no room in the motel myself, I—a friend of mine with the Baltimore paper had told me that I could use his room as my headquarters. He had a special 'phone set up in there and I went in there and talked [fol. 505] briefly with him for some time and then I started

back to the campus. I believe at that time he told me what news—what developments he had.

Q. Well, don't tell me that, you are not supposed to say what he told you.

A. Well, I am just saying he told me that, and then I told him I would go back to the campus. His was a morning paper so he had to keep much closer to the 'phone than I did. Mine was an afternoon paper. So, I had a lot more time.

So, I got my car, which had been parked down there, and started back and decided then I would stop at the Mansion Restaurant and get a cup of coffee.

Q. Where was this—was it the Mansion Restaurant or the Mansion House?

A. Mansion House, I—one or the other. I am not sure. It was about, I suppose, not more than a block from the intersection of University and Main Street, heading toward the square.

Q. To identify it, about how—about halfway between University and the Courthouse on the square?

A. Roughly that I would say.

Q. And on the west side of the street?

A. You have got me now on that. It was on the left as you head toward the Courthouse. I suppose that would [fol. 506] be the west side.

Q. Typical of an airman, but go ahead. How long did you stay there?

A. Well, I went in with the intention of getting a cup of coffee and it suddenly occurred to me I hadn't had anything to eat since breakfast. I asked the proprietor if I could get something and he said well he didn't know.

Q. Well, did you eat there?

A. He said, "I think all my help is gone." But he said, "If my help is not gone I will fix it for you myself."

Q. Where did you go after you ate?

A. I immediately went back to the campus.

Q. Tell the Jury what you saw?

A. Well, I got back there and just moved around in the Circle on the east front of the Lyceum building where most of the activity was taking place.

Q. What was that activity at that time?

A. Well, it varied. It was throwing of rocks, bricks, sortics toward the building.

Q. Was it any organized operation you could see?

A. There seemed to be some measure of organization; to what extent it was I can't say.

Q. Well, just describe to the Jury what groups would participate, and how many there would be, and what they [fol. 507] would do.

A. I can't give any estimate in numbers. It would just be a big crowd there. The main trouble with estimating number of how many were participating was the fact that there were so many onlookers there including some women.

Q. What were the onlookers doing?

A. They were just watching.

Q. How were they—what was their activity?

A. Well, a lot of them were standing on steps of building, just watching the activities going on. There were some bricks that were being thrown, there was some source of bricks that would be brought up there, and they would take them and break them on the curbstone. They seemed to have something of a supply system.

Q. Go ahead and tell us what else you saw?

A. Well, I moved around from time to time there, from one part of the campus to another. First, from the right side facing the Lyceum Building to the left side, as the activity would change and I talked to some—some of the students very briefly and very casually. I kept an eye out. I was trying also to find General Walker.

Q. Did you ever find him?

A. I did.

Q. Could you point to the Jury with the pointer where [fol. 508] you found him?

A. To orient myself.

Q. Get oriented. There is the Circle right in the middle.

A. I found him—

Q. First, put your finger, your pointer on the monument.

A. Here is the monument here, and I found him roughly in that area there.

Q. I see. All right.

A. He was standing under—in the shadow of a tree, as I recall.

Q. Was that generally as you pointed, generally south of the monument?

A. South, southeast.

Q. All right, go ahead. What was he doing?

A. He was standing with a young man that I met later and recognized as having been with him down at the Ole Miss Hotel.

Q. Had you attended a news conference or something at the Ole Miss Motel?

A. No, I was late getting there for that. I came in while it was going on, but by this time the Marshals had moved on to the campus and I did not stay for that.

Q. But you did see this lad with Walker at the motel?
[fol. 509] A. Yes, sir, I did.

Q. Were you able to identify him later on?

A. When I met him, yes, sir.

Q. Did you actually meet him and shake hands with him?

A. Yes, sir.

Q. Now, what was Walker and this boy doing?

A. They were standing there.

Q. Tell the Jury what was going on, who was around them, what was being done and what was said.

A. Well, I had wanted to see General Walker. I had heard he was on the campus and I had, while watching trying to observe what else was going on, I had kept my eye open for him.

Q. Just go ahead and tell us without getting into hearsay.

A. I finally saw someone that I thought I recognized by the poor lighting that we had, which was General Walker. I had met him before so—

Q. Where had you met him before?

A. I had met him in Washington, D. C.

Q. Under what circumstances?

A. He was a witness in a Senate hearing there and I met him one night when I had arranged to try get an ad-[fol. 510] vance copy of his testimony.

Q. Was that along in April, 1962?

A. I can't remember the month. Must have been about that time.

Q. Could you recognize him from that previous brief acquaintance?

A. I thought I recognized him.

Q. All right, sir. Go ahead and tell us what happened.

A. I went up to him and asked him if he was General Walker, and then I introduced myself. He introduced me to this young man whose name I never—if I got it, I didn't recall it, and we talked at some length there.

Q. Did you stay right in that place, or did you move around?

A. We stayed there a little while. While we were there I think the General—some activity had occurred up on our left, which I think would be the south side of the Circle there.

Q. Would that be up toward the Lyceum?

A. Up toward the Lyceum. The General asked the young man to go up and see what it was, and I think while he was gone—I am not positive about this—that I suggested that we move. I wanted to move up closer to see if I could see what was happening.

[fol. 511] Q. What was the visibility from that point, Mr. Holland?

A. It was pretty difficult to see. It was pretty difficult to see because not only was the lighting very poor, but also there was often tear gas or something that was in the air, and it was hard to see.

Q. What was the weather conditions that night? Was it wet or dry?

A. I recall it was a pretty pleasant evening other than—

Q. Do you know whether it was overcast or moonlight?

A. I don't recall that.

Q. All right, sir, go ahead.

A. Well, we moved at my—I suggested we move, because I wanted to get up closer. We moved from about right there (indicating) to maybe right in here somewhere where this crosses here, coming down.

Q. What did you observe from that position?

A. You couldn't see too much more.

Q. What was your gait as you moved up there?

A. Pardon?

Q. What was your gait as you moved up there? Did you walk or did you run?

A. We just walked across the street.

Q. How long did you and General Walker stay there?
[fol. 512] A. Well, I talked to him there and while I was talking to him there there was quite a bit of activity that occurred over on this side of the Lyceum.

Q. What was that activity?

A. Well, it seemed to me, as I recall now, that they began throwing Molotov cocktails and things, and so I left General Walker and walked over to see what it was. I went by myself there.

Q. Was that the first activity of that kind you had seen?

A. I believe it was.

Q. What did it look like, a bright flash?

A. Oh, yes, sir, a bright flash when a bottle would burst.

Q. Who went with you over there?

A. I went alone.

Q. All right, sir. What did you observe?

A. I saw some of the activity going on, saw some of the bottles being hurled.

Q. Did you see them making the missiles?

A. Not at that time, but later.

Q. Where was that activity?

A. In the same area.

Q. How were they making them?

A. Pouring gasoline into bottles, or some kind of container, and throwing it.

Q. Then what happened?

A. I walked back to talk some more to General Walker, and I believe I talked with him then. I am—to be frank to say, I can't remember whether I left him once or twice.

Q. Uh-huh.

A. I think it was twice.

Q. Yes, sir.

A. And then I came back and we talked some more.

Q. Have you tried your very best to recollect in detail that incident?

A. I have, and I just can't recall whether it was one or two times I personally left.

Q. Yes, sir.

A. And always alone.

[fol. 514] Q. All right, go ahead.

A. I left and came back. And assuming I did leave again, I came back a second time, and a group, there was a group around him of three or four, as best I could tell. So I did not go up to him that time but went off to watch something else, and that was the last time I saw him.

Q. You have been a newsman, you say, some 30 years?

A. Yes, sir.

Q. Did you see him any more that evening at all?

A. Not any more, on the campus. Not until the next day.

Mr. Watts: I believe that is all, Mr. Holland.

Cross examination.

By Mr. Gooch:

Q. Mr. Holland, did you say anything to General Walker about having led a charge?

A. I did.

Q. Did he affirm or deny it?

A. He didn't answer.

Q. Now as I get the testimony you got on the campus there before the gas was fired and you stayed there for a considerable length of time. I guess you were trying to observe everything that a newsman tried to observe?

A. Correct, sir.

Q. Then you started walking away from the tear gas, [fol. 515] came back over on the east side of the campus, I suppose you milled around with the crowd there some?

A. Very much so.

Q. Did you fix, attempt to fix the time? You fixed the gas being discharged about 8:00. What time would you say you got back around to the—

A. I think it must have been about 11:00 or later when I got back because I know, having left there, I went down—I stopped and had dinner before I came back.

Q. Then you didn't get on the east side of the campus, you did come back on the north side?

A. I come back on the east side, but I didn't get out of the car. I drove by—he let me out at the corner. I walked down to get my car, spent some time talking with my newspaper associate friend, started back to the campus, stopped and got dinner. So it must have been 11:00 or later when I got back on the campus.

Q. Now the only conversation you had with General Walker, I believe you asked him—did you say to him, “I hear you led a charge?”

A. Or “I understand you led a charge.” I understand you led a charge.

Q. What was his reply?

A. There was no reply.

Q. You say you have known General Walker for some time?

[fol. 516] A. I had met General Walker a few months previously when he came to Washington to testify.

Q. Did you consider General Walker a public figure?

A. Yes, sir, I considered him a public figure.

Q. Did you consider him a national figure?

A. Yes, sir.

Q. Now I assume at the time that you were down there you went down there to write a story, did you not?

A. Yes, I did.

Q. And you did write a story?

A. Yes, I did.

Q. Did you carry that story under a byline?

A. Yes, sir, I did, or my office did. I have nothing to do with that.

Q. I mean—what does it mean when you have got your “by somebody,” does that mean they wrote the story?

A. It means they generally wrote the story. There might be some changes or additions but—

Q. In other words the story, if they say it is “By Cecil Holland,” the story is principally by Cecil Holland, but they might add a few things?

A. They might add something, yes.

Q. They don’t change the context, or do they?

A. Well, I don’t quite understand.

Q. I am trying to find out what it means when you have [fol. 517] got a byline in a newspaper.

A. Well, the context on a matter of this kind is mostly descriptive and things of that kind.

Q. Well, who would have given the description to the newspaper, if it was carried under your byline, before the story was written?

A. Basically what I gave them would be it.

Q. I hand you here, sir, what purports to be a photostatic copy of Evening Star, and over on the right-hand side under the headline, “Troops Fire Over Oxford Mob After Quelling Campus Riot, Meredith Registered, Two Die, Scores Hurt, Bulletin,” and then, “By Cecil Holland”.

Now did you write the story as appears in this paper?

A. I wrote a large—most of the story. Some inserts I did not write.

Q. Would you say for the most part the story that appears under your byline in the Evening Star on the date October 1st, 1962, was matters that you reported to your newspaper?

A. Yes.

Q. Now you were in no way connected with the Associated Press, were you?

A. I was working alone.

Q. You were an employee of the Evening Star?
[fol. 518] A. Yes.

Q. You had no connection whatsoever with the Associated Press? Personal?

A. You mean personal connection?

Q. Personal.

A. Personal, that's right.

Q. And this story that you have written here, was that written based on the Associated Press report, or what you saw and observed?

A. I saw no Associated Press report.

Q. Did you see any Associated Press report before you wrote this story?

A. No. You mean actual copy or something?

Q. Well, any newspaper reports or anything?

A. No, I was told about some.

Q. Did you use any Associated Press report in writing the story you wrote under your byline on October 1st?

A. Not personally, no.

Mr. Address: Judge, I can hardly see the witness with Mr. Gooch standing there. Perhaps it would be easier if he took his seat.

The Court: Well, Counsel, I permit Counsel to stand up here when they are asking witnesses about an exhibit. Go ahead, Mr. Gooch.

By Mr. Gooch:

Q. Do you identify this paper as being a photostatic [fol. 519] copy of the edition of the Evening Star of October 1, 1962?

A. I do.

Q. You identify the byline of Cecil Holland?

A. I do.

Q. Would you say that that story was written in the main by yourself on information you furnished the Star?

A. Information I furnished the Star, yes.

Q. And—

A. It was sent by telegraph. Let me—may I state—pardon me. I was thinking of an earlier edition. A lot of this was telephoned.

Q. Telephoned?

A. Yes, sir.

Q. All right, but at the time you wrote the story you had neither seen nor talked to the Associated Press reporter?

A. The only qualification I would say I might have spoken, said hello to one that, if I had seen him, that came from Washington. But not any discussion.

Q. Did you get any information on which you wrote this story from any Associated Press reporter?

A. No, sir.

Q. Did you see any news releases by Associated Press reporters before you wrote this story?

[fol. 520] A. No, sir.

Mr. Gooch: We would like to offer in evidence, if the Court please, this Defendant's Exhibit 2, I believe it would be and I would like permission to read it to the jury.

The Court: Have you seen it?

Mr. Watts: No, sir, I haven't seen it. Mind if I ask the witness a qualifying question?

The Court: Yes, sir.

Mr. Watts: I notice something in here about an incident that occurred on the Oxford square the next day. Did you see General Walker on that square?

A. I saw him off the square one time.

(Conference at the bench.)

Mr. Watts: Do I understand, Mr. Holland, you did not see Walker on the square?

A. If I may answer.

Mr. Watts: Sure.

A. I saw him when he came down to the Mansion House restaurant and tried to get in.

Mr. Watts: That was the following day?

A. Yes, sir, this is the following day. This new lead is based on what happened in the square that day.

Mr. Watts: The next day?

A. The next day.

[fol. 521] Mr. Watts: And how long did you see Walker at the Mansion House restaurant?

A. Well, he came up and tried to get in. The door was locked. He turned and left and that was the last I saw of him.

Mr. Watts: That is the extent of your contact with him the following day?

A. Yes, sir.

Mr. Watts: If the Court please, I object to any— Well do you have any comment in here about Walker being on this square that was not acquired from your seeing him on the square?

A. No, other than what I saw there.

Mr. Watts: And what you saw was at the Mansion House restaurant at least a block and a half from the square?

A. Yes, sir.

Mr. Watts: If Your Honor, please, except where it has the comment about Walker being on the square, it obviously came from somewhere else.

[fol. 522] The Court: That may be a matter of cross examination. I will permit Mr. Gooch to go ahead and ask additional qualifying questions.

Mr. Watts: Excuse me. Might I finish looking at the article, please?

By Mr. Gooch:

Q. What I am specifically asking you now, Mr. Holland, and the things that are interesting to me in connection with this question, is not what happened on Monday morning, October the 1st. I am confining the matter now to the matters reported in this article as happening on the campus of Ole Miss between 8:00 o'clock, p.m., on September the 30th, 1962, and, say, 12:00 o'clock, midnight.

Now in connection with that, does this article that you have written for the Evening Star represent accurately your portrayal of the things that you saw and observed there on the campus of Ole Miss that night?

A. Well, sir, I haven't read the article. I don't know whether I have read it since I dictated it and if you would be specific and ask me points, because I—my office might well have inserted some material in the story.

Q. Might have. I just was wondering because it was under your byline.

A. Well, that is not unusual.

Mr. Address: Your Honor, the story under his byline is about what happened the following day. The story that's [fol. 523] in here about what happened on the campus is on the byline of one Tom Joyce and we ask that the Court look at that.

The Court: I'm going to wait until Mr. Gooch finishes attempting to qualify the witness.

Mr. Address: All right, sir.

Mr. Gooch: Where is Tom Joyce?

Mr. Watts: Down at the bottom where it's underlined in red.

Mr. Address: The story about what happened on the campus is the Tom Joyce story. This is the Oxford mob in the City of Oxford the following day.

Mr. Gooch: You haven't read this then, Brother?

Mr. Address: I read it pretty good.

Mr. Watts: I move to strike the family relationship.

Mr. Gooch: I want to offer in evidence the story that this gentleman wrote who says he wrote concerning the matters that happened on the campus at Oxford, Mississippi, between 8:00 p.m., and 12:00 midnight, on September 30th, 1962.

Mr. Watts: To which we have no objection to anything in there that occurred the night of September the 30th.

The Court: All right, I will admit that part of it. [fol. 524] That's Defendant's Exhibit 2, Mr. Nuss.

Mr. Watts: If Your Honor please, on second thought, I will object to the article because that's not—something this man has written is proper for cross examination.

Now a newspaper article per se is hearsay and I think it is grossly improper to just—we all know how newspaper articles, the problems we have—and I think in cross examination of a witness, you can ask a man if he said certain things but laying a newspaper article before a jury with all the other things that are in there is grossly improper and I must object to it.

The Court: Overruled.

Mr. Watts: Yes, sir.

Mr. Gooch: Let me get down to now where we—I am reading now from the Defendant's Exhibit 2.

Mr. Address: Judge, we are going to object to his reading from it until it has actually been proven up and introduced.

The Court: It's been admitted, Counsel. I just got through admitting it.

Mr. Address: Oh, you did admit it?

The Court: You may proceed.

Mr. Gooch: I would like to finish this in one time.

[fol. 525] The Court: You don't think you will have time?

Mr. Gooch: No, sir, it's quite lengthy.

The Court: Ladies and Gentlemen, we will recess until 2:00 o'clock. Keep your seats in the courtroom, please, until after the jury retires.

(Defendant's Exhibit No. 2, was marked for identification.)

(Thereupon, at 11:53, a recess was taken until 2:00 o'clock, p.m., of the same day.)

[fol. 526]

Afternoon Session

(2:00 o'clock, p.m.)

The Court: All right, Mr. Gooch.

Mr. Gooch: I am waiting for the witness.

CECIL HOLLAND, resumed his testimony on cross examination as follows:

By Mr. Gooch:

Q. Mr. Holland, for continuity, I believe that just before the noon recess, I had asked you if you reported to your newspaper on October 1st, 1962, your version of the events that had occurred on the campus of Ole Miss between, we'll say, 8:00 o'clock, p.m., and 12:00 midnight of September the 30th, 1962?

A. Yes, sir.

Q. Did you understand that to be my question?

A. Yes, sir.

Mr. Gooch: And Your Honor had admitted into evidence this article.

The Court: Relating to that period of time.

Mr. Gooch: I will not read what happened on October the 1st. This is just, as I view it, on this witness' story relating to the events on the campus: "The campus rioting—" I am beginning here on Page 6, Mr. Watts.

Mr. Watts: All right, sir.

[fol. 527] (Sotto voce conference between Counsel.)

EXCERPTS FROM DEFENDANT'S EXHIBIT 2

Mr. Gooch: "The campus rioting punctuated with gunfire from the rioters' ranks broke out last night as students and many outsiders vented their anger over the entrance of Mr. Meredith to the 114-year-old institution.

"The riot raged throughout the night as students and outsiders repeatedly attacked several hundred Marshals who had brought the Negro student to the campus late in the afternoon.

"Regular Army troops were ordered here from their staging area in Memphis, Tennessee, when the situation rapidly got out of hand under the cover of darkness.

"Mississippi's Lt. Governor, Paul B. Johnson, Jr., visited the campus at the height of the rioting and warned Justice Department Officials, who are here, to expect more violence and possibly bloodshed during the day.

"The Lt. Governor was said to have expressed fears that many from outside Oxford, outside of Oxford, were on the way here to join in battle against integrating the University.

"One of those killed in the campus rioting was a French newspaperman Paul Guihard, representing the London Daily Sketch and a French news agency. After one of the early student forays, he was found dead with a wound in [fol. 528] the back.

"A 23-year-old jukebox repairman, Ray Gunter, of Oxford, also, was fatally shot. He was taken from the University campus to Oxford Hospital, where he was pronounced dead on arrival.

"A United States Marshal, Graham Same, was critically wounded by a gunshot in the neck and was flown to the hospital at the Memphis Naval Air Station for emergency treatment.

"Another Marshal was wounded in the thigh by rifle fire.

"Newsman Bill Crider of the Memphis staff of the Associated Press was wounded in the back by a burst of bird-shot. Several members of the Mississippi State Patrol also

were wounded. Mr. Crider's wounds were not serious. He was treated and soon returned to the campus."

I'm omitting a reference to the Friday incident.

Mr. Watts: Right.

Mr. Gooch: "United States Marshals attired in riot jackets and helmet liners earlier had turned back the attackers time after time in a battle they fought with tear gas and smoke bombs.

"The attackers used bricks, iron pipes and, as the night wore on, turned to Molotov cocktail bombs made from soda bottles filled with gasoline.

[fol. 529] "Cars and television trucks were smashed and one was burned as rioters turned on a newspaperman and television cameraman with a widely separated number of attacks.

"Mr. Walker, the man who led the troops ordered by President Eisenhower into Little Rock in 1957, in another desegregation crisis, led a thousand college youths in one charge that fell back a hundred yards from the Marshals. Mr. Walker jumped on the campus Confederate memorial and yelled, "If you can't win, go home, don't stay at the University. But let's not quit. We can win."

"The Marshals, while armed, used only their tear gas bombs and never fired on their attackers.

"A Justice Department spokesman inside the beleaguered building said one time they fired warning shots in the air and another time punctured a fire hose being used by the students. They were harassed and under danger from intermittent gunfire which came from a hidden sniper who potted away at the buildings.

"The plight of the Marshals was becoming increasingly serious, as the first military unit arrived on the campus. This was the Oxford contingent of the Mississippi National Guard which had been federalized by the President. Its commander, Capt. Murray Faulkner, a nephew of William [fol. 530] Faulkner, the author, who lived in Oxford, was among those injured. He was struck on the arm with a hurled brick.

"The students and the outsiders borrowed, as one said, a bulldozer and a fire engine and used these in an effort to run down the Marshals and get close enough to hurl bricks. The bricks and timber used to set barricades on the drives leading to the Administration Building were taken from a Science Building under construction close at hand.

"The Marshals, for the most part, stayed close around the building, except for forays to drive the attackers back. They captured 31 prisoners during the night's rioting. Two of these were operating the bull dozer and the fire truck. The truck made two successful runs close to the Marshals before it was stopped amid a cloud of tear gas. The operator, a Justice spokesman said, was not a student.

"Most of the actions and the bitterest fighting took place in front of a tree-spotted park-like area called University Circle. It is adorned with a monument as a memorial to the Confederate dead of the Civil War.

"The whole area is strewn today with debris of the fighting. Empty tear gas cannisters, smashed and burned auto-[fol. 531] mobiles and television trucks, broken bricks, logs and slashed fire hoses.

"The rioters went wild when they learned that Mr. Meredith, who had been denied admission three previous times to the University, had been brought without incident on the campus.

"Obscenity filled the air. The rioters' wrath was directed more at the Marshals than at the Negro student who had been housed under heavy guard in an apartment on the campus to await enrollment today.

"It came after Deputy Attorney General Nicholas deB. Katzenbach and other high Department of Justice Officials, who arrived here in an air force plane, conferred with the University Officials, including Chancellor J. D. Williams in the Main Administration Building. With a wild assortment of yells, screams and curses, the rioters moved on the Marshals surrounding the building. 'You blank Negro lover,' and, 'Why don't you bring Kennedy down here,' were some of the cries that filled the air thick with flying brick bats.

"When word filtered into the ranks of the rioters that a Marshal had been shot and seriously wounded, a cheer went up. The rioting broke out in frightening fashion as darkness came.

"In a short while Mississippi State police, several hundred strong were withdrawn from the immediate fighting area and then moved off the campus.

"This left the Marshals and a small contingent of Army Engineers, sent here as a house-keeping unit for the Marshals, to hold off the repeated attacks.

"With State Police gone, the entrances to the University campus were left wide open and anyone who wished could walk down the darkened streets toward the Administration Building. The building was often bathed in drifting smoke from the bombs that had been set off.

"As unexpectedly as the State police roadblocks were called off, they were restored four hours and 45 minutes later just as the Regular Army forces began appearing on the campus.

"This blocked off the University grounds from groups of men who seemed to be heading there in increasing numbers.

"The night's wild disorders came after an ominously quiet weekend here marked only by a few hijinks over Ole Miss's football victory over Kentucky Saturday night at Jackson, the state capital.

"Tensions began building up when reports filtered through the town that some move could be expected soon to bring the Negro student here for registrations.

"Rumors flew thick and fast and the tension grew as [fol. 533] word came that President Kennedy had taken control of the Mississippi National Guard. Angry mutterings were heard then and later about this action.

"The State police, which had disappeared from Oxford late Friday, returned in force early Sunday. They sealed off the campus and would permit no one except students and those living on the campus. Newspapermen who had been given press quarters in the Administration Building were denied admittance.

"Early in the morning the engineers had arrived at Graham Lake, 15 miles from Oxford, and set up a house-keeping camp for the Marshals.

"At 2:00 p.m., amidst all sorts of rumors, the Marshals arrived at the Oxford University Airport. First, a DC-6 and then four two-engined planes had landed and all were filled with Marshals.

"Chief United States Marshal James McShane and his Assistant, Jack Cameron, descended from the four-motored plane and went to a telephone with Mr. McShane clutching a fistful of dimes.

"Soon seven Army trucks drove up. The Marshals, numbering about 70, lined up near the tracks in straggly military fashion. They stood and waited.

"A little later an Air Force jet swooped down and disgorged Mr. Katzenbach and other Justice Department [fol. 534] Officials.

"After more telephoning and conferring the officials and Marshals climbed into troop carriers and three sedans and took off from the airport.

"Midway to the highway they met a Mississippi Highway Patrol car carrying Col. T. B. Birdsong, State Safety Commissioner, and University Chancellor J. D. Williams. Another conference followed and then the caravan moved off. [fol. 535] By this time hundreds had gathered at the airport and lined the road leading into town. Much to everyone's surprise the caravan turned abruptly into one of the University gates without opposition from the State Police guard. Within a few minutes the empty troop carriers came out another gate and went back to the airport. The Marshals quickly surrounded the Administration Building and three hours later Mr. Meredith was brought to Oxford. He landed in a small plane at the airport accompanied by John Dohr of the Justice Department and a Marshal, and was taken without incident through a gathering throng along the road to the University.

The reporters, not allowed in, watched from the entrance several blocks away. They could hear yells and jeers occa-

sionally and got frequent reports from students who came and went.

As dusk came the mood of the crowd within the University grounds and outside began to change.

At the airport Mr. McShane was asked by a young woman in tattered pants for his autograph for her son. A few hours later a mob, first of students and then students and outsiders, was crying for his blood.

About dark reporters suddenly were allowed within the grounds. Television cameraman Gordon Yoder, of Dallas, and his wife, a native of Jackson, Mississippi, were the first [fol. 536] to reach the University circle. Mr. Yoder left his car to take pictures and was set up. As State Police stood by went back to his car where both he and his wife, who was driving, came under attack. Headlights were kicked out, windows smashed and eventually the rioters began rolling the car to overturn it with Mr. and Mrs. Yoder inside. The State Police took them out and away as the mob wrecked the car. Mr. Yoder also lost a camera. At the entrance to the Administration Building a Shreveport television man was manhandled, and an Atlanta, Georgia, reporter was struck by the cry, "Damn Yankee, go home."

Three troop carriers, one with a Negro driver, was the target of some of the rioters. Flaming torches were hurled at the canvas tops of the truck and the Army men were kept busy putting out the fires.

It soon became evident that Attorney General Robert F. Kennedy and the President had sent too little force to cope with the situation and it was too late, for the moment, to get in support and forces.

Edwin O. Guthman, the Justice Department public relations officer who had come to Oxford came out and said in ten minutes he would meet with reporters at a nearby motel for a briefing on what had happened. The briefing still has not been held and the reporters contact with Mr. Guthman inside the Administration Building had been by [fol. 537] telephone.

The students and others kept pushing in on the Marshals standing shoulder to shoulder around the building. There were cries, "tear gas" and the Marshals donned their masks and took out their containers and readied their tear gas guns. Then the order would come, "Hold gas" and a little later, "Secure gas."

All of a sudden the explosion came. The order came and this time a cascade of canisters and tear gas bombs fell amidst the advancing students. A squad of State Police and newsmen were caught in the fumes. Mr. Guthman explained later that Chief Marshal McShane gave the order after a piece of iron pipe had been hurled at a Marshal and left a big dent in his helmet liner.

Inside the building Col. Birdsong was asking the Justice Department official if they wanted the State Police to remain. He was told they did. A Mississippi official recommended that Military troops be called out and at 8:30 p. m. central standard time the order for troops went out. Then the State Police, angered because they were caught in the first tear gas barrage and resenting, it seemed, the presence of the Marshals, began withdrawing. Orders came up to them to keep back from the fighting lines. Conditions rapidly worsened without the presence of the State Police. The attacks on the Marshals grew bolder and more and [fol. 538] more people, including women and girls, were pouring into the fighting area. There were advances and threats, depending upon the volume of tear gas."

Now, Mr. Holland, does that article which I have read concerning the incidents on the campus reflect the report that you made to your paper?

A. In most particulars, yes.

Q. I believe you have stated, and this is repetition, but I wanted to ask it again, if I may, that that report was made without conference or consultation with any AP newsman, is that correct?

A. Yes, sir, that is correct.

Q. You had not—do you know a reporter for the AP by the name of Van Savell?

A. No, sir.

Q. Had you ever met him?

A. No, sir.

Q. Had you talked to him prior to the time you wrote that story?

A. If I did, it was just among a group of reporters without knowing.

Q. Did you read or see any AP news report prior to the time you called that story in to your paper?

A. No, sir.

Mr. Gooch: That is all.

[fol. 539] Redirect examination.

By Mr. Watts:

Q. Mr. Holland, you have talked to AP personnel, including Mr. Leon Pearl of New York, the chief counsel for the Associated Press, haven't you?

A. Since that time?

Q. Yes, sir.

A. Yes, sir, since that time.

Q. When and where was that conversation held?

A. With Mr. Pearl?

Q. Yes.

A. It was in Washington, D. C.

Q. Is Mr. Pearl in the room?

Yes, sir, the gentleman standing there, is that the man?

A. Yes, sir.

Q. Roughly when was that conversation held?

A. I just have to guess now.

Q. Well, this year, last year?

A. I think it was last year, I believe.

Q. Now, if I understand, Mr. Holland, this long article that counsel has read has the by-line, "By Cecil Holland, Star Staff Writer". That is yourself.

A. Yes.

Q. Now, you answered his question that some of these [fol. 540] statements in the article were reported by you to your company or to your paper; is that right?

A. I didn't quite understand.

Q. You answered, as I understood it, Mr. Gooch's question to you that some of the statements he had read were reported to you by your paper?

A. Yes, sir.

Q. And do I take it, then, some of them were not?

A. Some of the statements in that story were not mine.

Q. Were not your story?

A. Were not mine.

Q. Now, let me ask you particularly about this statement. "Mr. Walker, the man who led the troops ordered by President Eisenhower into Little Rock in 1957 in another desegregation crisis, led 1,000 college students in one charge that fell back 100 yards from the Marshals. Mr. Walker jumped on a campus Confederate monument and yelled, 'If you can't win, go home. Don't stay at the University; let's not quit, we can win.'"

Is that your language?

A. No, sir.

Q. Did you report anything even approximating that to your paper?

A. No, sir.

[fol. 541] Q. Did you see General Walker at any time on the Confederate statue?

A. No, sir.

Q. Did you see him or ever talk to anyone specifically who did see him, that purported to state that Walker led a charge against the U. S. Marshals?

A. No, sir.

Q. Now, then, do you know what an AP news release is?

A. Yes, sir.

Q. Or a wire service release?

A. Yes, sir.

Q. Directing your attention now to the Plaintiff's Exhibit 3-M and we have, as I understand it, if Your Honor please, a stipulation that all of these exhibits—I will ask the reporter to give us the number, one through, as I remember, 9-G are original wire service reports by the Associated Press. Do we not have that stipulation, Mr. Gooch?

Mr. Gooch: The stipulation was there would not have to be any proof of authenticity but we could still make objections to admissibility.

Mr. Watts: Yes, sir, I understand, but it is admitted, is it not, that these documents I hold in my hand are official wire service reports from the United Press—I mean the [fol. 542] Associated Press, I am sorry, and might I inquire did these come from the New Orleans office or the Fort Worth office?

Mr. Gooch: New Orleans office. That is what you asked for.

By Mr. Watts:

Q. Now, Mr. Holland, you are an experienced newsman, are you?

A. Yes, sir.

Q. Are you experienced in the make-up of news articles and reports?

A. Yes, sir.

Q. Do you know what a teletype wire service release is?

A. Yes.

Q. Directing your attention to the Plaintiff's Exhibit 3-M, and particularly this language right here, starting with, "Walker then said . . ." do you see that language?

A. Yes, sir.

Q. I will read you this statement that is attributed to your by-line in this Defendant's Exhibit 2.

"Mr. Walker, jumped on a campus Confederate memorial and yelled, 'If you can't win go home. Don't stay at the University but let's not quit; we can win.'"

Now, will you please read that wire service release [fol. 543] there?

A. "Walker then stood on the Confederate monument not far from the Administration Building and addressed his followers 'If you can't win, go home,' he declared. 'Don't stay at the University. But let's not quit; we can win.'"

Q. Now, I will ask you for your expert opinion as a newsman connected with this paper, having read that news release and having read this article under your by-line, will you tell the Court and Jury, please, sir, what was the source of that language Mr. Gooch read to the Jury?

Mr. Gooch: To which we object, being a conclusion on the part of this witness.

Mr. Watts: Let me ask a preliminary—

(Conference at the Bench between the Court and attorney for the Plaintiff.)

By Mr. Watts:

Q. Now, Mr. Holland—

The Court: I will sustain the objection.

By Mr. Watts:

Q. Now, Mr. Holland, did the Washington Star have any other reporter on the Ole Miss campus that night?

A. No, sir.

Q. Directing your attention to another article here in Mr. Gooch's—rather, the Defendant's Exhibit 2, which is an article here by Relman Morin, Associated Press staff writer.

[fol. 544] Directing your attention to that article which has a headline as you see there, I will ask you if the New York—as you were, if the Washington Evening Star had the Associated Press wire service?

A. Yes, sir.

Q. Did they have at that time any other wire services?

A. Not unless possibly something like a newspaper syndicate, sir, but—

Q. I mean, did they have the United Press?

A. They did not.

Q. And directing your attention further to a statement on page 1 of this Defendant's Exhibit 2, "The rioting in Oxford came after former Major General Edwin Walker had appeared in the square clad in a dark suit and wearing a ten gallon hat, the Associated Press reported."

● Is that your language?

A. No. I mean, it is rather obvious I—

Q. Is that same language under your by-line?

A. Yes.

Q. Have you previously related to this Jury a complete and ultimate detail everything you saw on the Ole Miss campus that you could remember on the night of this incident?

A. No, sir, I haven't. I have just sketched generally [fol. 545] what I—

Q. Have you outlined generally, as best you could?

A. Yes, sir, as best I could from my present recollection after this period of time.

Q. And have you outlined as best you recollect everything you knew about General Walker?

A. Yes, sir, I think so.

Q. And as to any statement in here about General Walker that you have heard Mr. Gooch read, did you report those to your paper; yes or no?

A. None of those statements I reported.

Q. Now, Mr. Holland, what is the mechanical or technical newspaper procedure that would result in these quotations that you have read and that you have heard, in this particular quotation I just read to you a moment ago which says, "The rioting in Oxford came after former Major General Edwin Walker appeared in the square clad in a dark blue suit and wearing a ten gallon hat, the Associated Press reported."

My question is: What is the mechanical newspaper procedure that would cause an article like that to appear in an article that has the by-line "By Cecil Holland, Star Staff Writer"?

A. Well,—while I was writing the general story and quite often in a case like this I may not have all the in-[fol. 546] formation and other information will be included in the story from the Associated Press. It is done quite frequently.

Q. Now, then, turn, please, sir, to the next page, which is the Plaintiff's Exhibit 4-D and I will ask you to follow this language to which I place my finger and let's compare that language in the Associated Press news release with this language in this Defendant's Exhibit 2 that is presented under your so-called by-line.

"Mr. Walker jumped on the Confederate memorial and yelled 'If you can't win, go home. Don't stay at the University but let's not quit. We can win!'"

Now, will you read that Associated Press news release, please?

A. "Walker then stood on the Confederate monument not far from the Administration Building and addressed his followers: 'If you can't win go home,' he declared. 'Don't stay at the University, but let's not quit; we can win.'"

Q. I will ask you to compare that statement that Mr. Gooch read out of your by-line article with that verbatim quotation from the Associated Press news release, and tell me what, if anything, there may be in the way of difference in those two statements.

A. Well, the first paragraph is somewhat different. One [fol. 547] says—my story says he jumped on the campus Confederate memorial and yelled, and the other says Walker then stood on the Confederate monument not far from the Administration Building and addressed his followers.

Q. All right, sir.

A. The quoted part seems to be identical.

Q. In your final conclusion, did that quoted part in this article come from this?

A. I have no recollection of writing it.

Mr. Watts: If the Court please, we move the Court to strike, and admonish the Jury not to consider this statement in this Defendant's Exhibit 2 which is presented to the Jury since it is shown that this part of the article was not written by this witness.

The Court: Overruled.

[fol. 548] By Mr. Watts:

Q. One other thing. Mr. Holland, did you have any, have a conference with your personnel back in your office concerning this alleged statement that Walker had led a charge?

A. Yes, sir.

Q. Would you relate that, please, to the jury.

Mr. Gooch: I object, if the Court please, to what may have occurred in the confines of his building or with his staff.

The Court: That would be hearsay.

Mr. Watts: All right, I think that myself. . . .

By Mr. Watts:

Q. Mr. Holland, when you conferred with Mr. Leon Pearl, the gentleman whom you identified there, did you give him this copy of the newspapers?

A. No, sir.

Q. Did he already have it when he talked to you?

A. I don't recall whether he got it or not. He was going to the paper to get some.

Q. I see. And did he ask you what in that article was your language and what wasn't, or do you remember?

A. I don't remember that.

Mr. Watts: I see. That's all.

Mr. Gooch: No further questions.

The Court: I am going to release this witness, if you don't need him.

[fol. 549] Mr. Watts: Yes, sir, we would appreciate his being released.

The Court: All right, you are excused, Mr. Holland.

Mr. Watts: Thank you, Mr. Holland.

Mr. Gooch: Thank you, Mr. Holland.

Mr. Watts: Might I check out with this witness about his...

The Court: Surely.

(Sotto voce conference.)

Mr. Watts: I might suggest to the Court that this deposition was, also, taken at Oxford, Mississippi, on March the 12th, 1964. Mr. Gooch and myself being present.

Mr. Gooch: This is Mr. Watt's deposition.

Mr. Watts: Sir, it was my deposition, yes, sir.

ROBERT CARRINGTON, testified by deposition as follows:

Direct examination.

By Mr. Watts:

Q. What is your name, please?

A. Robert Carrington.

Q. Your residence both on the campus and at home?

A. Byhalia, Mississippi, and Lester Dormitory.

Q. What town in Mississippi?

A. Byhalia.

[fol. 550] Q. Who are your parents?

A. Mr. and Mrs. R. E. Carrington, Jr.

Q. You are a student at Ole Miss?

A. Yes, sir.

Q. What school?

A. Business.

Q. What class?

A. Junior.

Q. Were you on the campus the night of September 30th, 1962, when the disturbance occurred?

A. Yes, sir.

Q. What time did you arrive on the campus?

A. I was here all day.

Q. Did you arrive out in the area called the Oval that night?

A. Yes, sir.

Q. Were you there when tear gas was first fired?

A. Yes.

Q. How long had you been there?

A. I had been there since about 4:00 or 5:00 o'clock.

Q. From just before they fired the tear gas and until I stop you, give us a narrative account of what you saw and what occurred.

A. I didn't understand that. Would you repeat the question.

[fol. 551] Mr. Watts: The question was repeated.

A. That afternoon I saw them when the Marshals came in the campus. I saw them when they were down by the park, the roadside park, I saw them coming in then and I went on up to the Lyceum and I saw them getting off the trucks and surrounding the Lyceum and I stayed there all afternoon until everything occurred. I saw everything.

Q. Did you see the tear gas when it was first fired?

A. Yes, sir.

Q. Describe to us what happened.

A. Well, I was standing behind the crowd and some boys hollered out, "Gas," and I started running back towards the "Y" and they, the students, were all running around just crazy like. They didn't know what was coming off. I saw Marshals start running out towards the crowds and that is when I took off. I left.

Q. Did you come back?

A. Yes, sir, I ran back towards the "Y", I ran behind Fulton Chapel but I came back, in a little while.

Q. Were you out in this so-called grove area there pretty much all during that time?

A. No, sir.

Q. Where were you?

A. I was over close to the Fine Arts Center and around the "Y".

[fol. 552] Q. That is north and northeast of the grove?

A. Yes.

Q. Were you where you could see what was happening out in the grove?

A. Yes, sir, I could see the Marshals running out there and some of the students throwing things at the Marshals, throwing bricks and things.

Q. Did you ever hear that General Walker had come on the campus?

A. Yes, sir, I heard he was there.

Q. Between the time of the first tear gas being fired and the time you heard that Walker was on the campus, was there anything approximating an organized charge of a large number of people with a leader in front of them—

Mr. Gooch: Object to that as calling for an opinion and conclusion.

The Court: Overruled.

Mr. Gooch: Note our exception.

A. No, sir.

Mr. Watts: I think the next is just argument of Counsel there and a similar question. Now the second question on Page 7.

Q. After you heard Walker was on the campus, tell what did occur out here in the Oval in the proximity of the Marshals?

[fol. 553] A. I never did see because I was at that time a good distance from the grove. I just heard scattered reports of people just telling me that people were just running up and hitting the Marshals and everything and I never did see it. I never actually was in the heat of it. I have asthma and I couldn't take that tear gas.

Q. How far were you from where this happened?

A. I was around the Mississippian Office.

Q. Where is that? You are looking now at Exhibit 1, which is a plat of the campus area and this circle in the middle is the grove and here is the YMCA.

Mr. Watts: I think the jury knows where the YMCA is, so. . . .

A. The Mississippian office is right here.

Q. That is the Journalism Building?

A. Yes, sir. I was right in this area right in here.

Mr. Watts: In order to identify that, perhaps I should point it out on the chart. Journalism (pointing).

Q. Where were you when you heard that Walker was on the campus?

A. I was at the Mississippian Office.

Q. Did you stay at the Mississippian Office all the time after that?

A. No, sir, I stayed at the Mississippian Office until about 12:00 o'clock, and then I went to the Fraternity House.

[fol. 554] Mr. Watts: I believe that's all.

Cross examination.

By Mr. Gooch:

Q. You never did see Walker, did you?

A. No, sir, I never did see him.

Q. Were there lots of bricks and stones lying around the Lyceum Building?

A. Yes, sir, the next morning.

Q. Okay.

Mr. Gooch: That's all.

Mr. Watts: Turn over to Page 3, the deposition of Duncan McFarlane.

DUNCAN McFARLANE, testified by deposition as follows:

Direct examination.

By Mr. Watts:

Q. What is your name, please?

A. Duncan McFarlane.

Q. Your residence both on the campus and at home?

A. Yes, sir.

Q. What is it, where do you live?

A. On the campus on Odom Dormitory, B-10.

Q. And your home address?

A. Natchez, Mississippi.

Q. What street?

[fol. 555] A. 1803 Wheeler Drive.

Q. And your parents?

A. A. D. McFarlane.

Q. Were you a student at Ole Miss in September of 1962?

A. Yes, sir.

Q. What school?

A. In the school of business and commerce.

Q. What class?

A. I was a Sophomore.

Q. Were you present the night the disturbance took place on September 30, 1962?

A. Yes, sir.

Q. Outline to us in narrative form what you saw and what occurred.

A. I arrived on the campus about 8:00 o'clock, maybe a quarter until, and there was tear gas being fired at that time.

I was in the grove from about 8:00 until approximately 1:00, maybe 2:00 o'clock, and the students were throwing bricks and bottles at the Marshals and they were shooting tear gas back.

There would be little groups of maybe three or four people that would charge up there and throw theirs and

retreat and then they would fire tear gas and then another [fol. 556] other little group would go up there and throw theirs.

Then they burned a couple of cars and there was some shooting going on but I couldn't find out where it was coming from, but there were guns being fired at the time. This just went on a pretty good while, all night, in fact, until I left about 1:00.

Q. Did you hear that General Walker was on the campus?

A. Yes, sir, I did.

Q. Did you actually see him and get around him?

A. He was pointed out to me from a distance but I did not hear him talk.

Q. Did you ever at any time after you heard that Walker was on the campus, observe an organized charge of a large number of people toward the Marshals all at one time?

Mr. Address: Did such an incident occur?

Mr. Gooch: I think you read the question.

Mr. Watts: Yes, that's the rest of my question.

Q. Did such an incident occur?

A. No, sir.

Q. Did anything occur other than what you have outlined in the general narrative that you have told us involving a large number of people in the crowd?

A. No, sir.

Q. Were you in the grove all during the period of time from the time you heard that Walker was on the campus [fol. 557] for, we'll say, an hour after that?

A. Yes, sir, I was.

Q. If an organized charge of as many as 500 or one thousand people had occurred, would you have seen it?

A. Yes, sir.

Q. Could you give us roughly the distance from the Confederate statue to the Lyceum Building?

A. I would say roughly it was a little over 100 yards.

Q. Were you ever during the period that you heard Walker had come on the campus for an hour thereafter out of the so-called grove area?

A. No, sir.

Q. Outline to us during this period of time just what you saw and what occurred.

A. Well, when I heard he was there, somebody said he was there, a group of people down at this statue where he was, it was where he was I guess because a bunch of people went down there, and I was back up front near the flagpole, that is where I stayed most of the time around the flagpole.

Q. Right at that point, when you heard he was there and a group of people went down toward the monument, did all of the people that were up in the grove go down there or just part of them?

A. No, I would say part of them went down there because there was still a good number of people around the flagpole.

[fol. 558] Q. What activity was taking place up near the flagpole and in that area while this other group went down to the monument?

A. These little groups were still throwing.

Q. Was there anything organized about the operation?

A. No, sir.

Q. Was there any change in the activities that occurred up next to the Marshal's after he made his speech at the monument that you have outlined?

Mr. Gooch: I object to that as calling for an opinion and conclusion.

The Court: It's good. Sustained.

Mr. Watts: All right, sir.

Q. Between the time you first heard that Walker was on the campus and the time that you saw the people going down there to the monument, was there any organized charge against the Marshals?

A. No, sir.

Mr. Gooch: Where is that coming from?

Mr. Watts: Bottom of Page 6, top of Page 7.

Mr. Gooch: Oh, I see.

Q. Describe for us just what happened in terms of this activity in the grove area between the time you heard Walker was on the campus and when you saw all the people going down to the monument.

[fol. 559] A. Well, part of the people left and went back down there and others stayed at the front and continued throwing bricks and the Marshals continued to shoot tear gas back and the people would just run up and throw and fall back to the flagpole or further back and then after the tear gas would clear out of the way, they would go back up again and throw.

Q. Assuming hypothetically that when Walker arrived on the campus,—

Mr. Watts: Let me look at that. That might be

Q. Assuming hypothetically that when Walker arrived on the campus, two leaders of the mob met him, one waving a big Confederate flag, that the two men took him by the arms, positioned themselves in front of 1,000 people and marched on the Marshals, were you in a position to where you would have seen that, had it happened?

Mr. Gooch: We object to that as calling for an opinion and conclusion of the witness.

The Court: Sustained, Counsel. We are not going into hypothets, Counsel.

Mr. Watts: All right, sir. The rest of that, I believe, still refers to that one question, so that will be all at this time.

Cross examination.

By Mr. Gooch:

Q. You never did see General Walker, did you?

[fol. 560] A. Yes, sir, he was pointed out from a distance. He was with three or four people and people were around him and he was pointed out to me.

Q. Did you consider him a public figure?

A. Yes, sir.

Q. There was a considerable number of rocks, stones, and bottles, and so forth, thrown at the Marshals?

A. Yes, sir.

Q. You say little groups or groups would go up and throw their missiles and then retreat when they would fire gas?

A. Yes, sir.

Q. Did that go on all the time or continuously?

A. Yes, sir, it did.

Q. Did you throw any of those rocks, bricks and bottles?

A. Yes, sir.

Q. Okay.

Mr. Gooch: Well, to get continuity:

Q. How many was in your group when you threw them?

A. Two or three.

Q. Just two or three of you; there was never more than two or three that would go up at any one time?

A. Possibly four or five, maybe six.

Q. Not over six?

A. No, sir.

[fol. 561] Q. Would ever go at one time?

A. No, sir.

Q. You said groups of two, three, four or maybe six would run up and give—throw their missiles or whatever they had in their hands at the Marshals and then come back?

A. Yes, sir.

Q. Where would they come back to, the main crowd?

A. Right past the flagpole, yes, sir.

Q. Now where was the main crowd that was watching all of this?

A. There was about 20 or 30 people behind the flagpole.

Q. You mean east of the flagpole?

A. Well, just a straight line parallel to the Lyceum Building behind the flagpole, they were grouped around there.

Q. How many were in that group?

A. 300, 400 or 500 students.

Q. And the group that would go up and throw their missiles would come out of that group, run up and throw their missiles and then come back to that group?

A. Yes, sir.

Q. Then some more of that group would go up and throw their missiles and come back, is that the way they did it?

A. Yes, sir.

[fol. 562] Q. But they were almost a solid line north and south just about where the flagpole was, is that right?

A. Not a solid line. They were just mingling around.

Q. About 400 or 500 people were in that group?

A. Yes, sir.

Q. And from that group came these missile throwers, is that right?

A. Yes, sir.

Q. Where were you getting those rocks and stones and bricks?

A. I heard that the bricks were coming from the new Science Building they were building back behind the statue back down there.

Q. Where did you get yours?

A. Off the ground, the people were bringing them up in a wheelbarrow and, I think, they were just dumping them around the flagpole.

Q. That is right in where all this group was standing?

A. Guess—by the flagpole, most of the people were back behind the flagpole.

Q. When you reached to get your missiles, where would you get them?

A. Off the ground, those that had been thrown and those that had been left around the flagpole.

Q. That had been dumped right in this group of several [fol. 563] hundred that were gathered around the flagpole, is that right?

A. No, they were dumped up in front of them.

Q. They came up in front of the group that was standing, and those that wished to would come out of that group, pick up their bricks and rocks and go throw them, be fired at and retreat back to get some bricks, is that the way it went?

A. Yes, sir.

Mr. Gooch: That's all.

Mr. Watts: Robert Lee Watkins is next.

[fol. 564] Mr. Watts: All right, on page 3, by Mr. Watts.

• • •

Q. State your name, please.

A. Robert Lee Watkins.

Q. Your address at school and home?

A. Labuve 83, University of Mississippi, and 1110 North Spring Street, Waynesboro, Mississippi.

Q. In what school are you enrolled?

A. Business school.

Q. What class?

A. I am a junior.

Q. Were you a student in September of 1962?

A. Yes, I was.

Q. Were you present on the campus the night of September 30, 1962, when the incident of that date occurred?

A. Yes, I was.

Q. What time did you arrive on the campus that evening?

A. Approximately 4:00 o'clock or 4:30.

Q. Where did you go?

A. First I went back to my room and unpacked my clothes. I had been home for the week-end, then I went back up to the Lyceum Building where there was a large crowd gathered.

Q. Orienting you for the purpose of this deposition, [fol. 565] we have Plaintiff's Exhibit No. 1, which is a scaled plan of the University and shows the Confederate monument on the east end of an installation called the Circle, it shows the Lyceum Building on the west end, and shows the YMCA up here on the northeast, and as you

give your answers, if you can, remember the compass directions and it will help us to follow them later.

Now, when you first arrived in the area of the Circle - where did you go?

A. I first went to the north end of the Lyceum Building, between the Lyceum Building and the Math Building, which is Peabody.

Q. What did you see?

A. At the time there were a lot of Marshals gathered around the Lyceum and lined around the Lyceum Building and a lot of students were gathered there.

Q. In your own words, give us a narrative account of what you saw, heard, and what occurred?

A. You mean at this time?

Q. From that time, and just carry it right on through.

A. That afternoon it started out and it was just, I don't know, it must have been 200 students there, and as time went on more students gathered there and things got rough, and a little later on some of the Marshals fired [fol. 566] the tear gas and everybody ran back then, ran back in the Grove, a lot of students did. They just spread out and a lot of people started throwing bricks and bottles and things at the Marshals and more tear gas was fired. This kept on going and went right until, I guess, I don't know what time in the morning. During this time we were up in the Grove but I was there most of the time. I only left a couple of times and went back over to the dorm and came back and all during the time I saw these students throwing things.

Q. Just tell us what the activity was that was directed by the students against the Marshals. Son, do you know what a charge is?

A. Yes, sir. Just during the course of the riots there were just students, I don't guess I ever saw any organized, I know I never saw any organized charge during the course of the riot. There would just be several students, maybe three or four at a time, that would charge in and throw

bricks at the Marshals and they would go back and they would shoot tear gas and it would clear up and then some more of the students would come in but there was nothing organized that I saw. If anything had been organized, I don't think the Marshals would have stood too much of a chance of defeating us on the University at that time.

• • •

[fol. 567] Mr. Gooch: To which we object to the last part of the answer as an opinion and conclusion of the witness.

The Court: Sustained.

• • •

Q. Did you hear or learn that General Walker was on the campus at any time?

A. Yes, sir, I heard a little later on, it was later on, not that afternoon but that night, I heard that he was there.

Q. What did you do when you heard he was there?

A. I was standing up close to the statue as you come off University Avenue when you first come to the Circle there that circles by the Lyceum Building, and the boy that was standing with me, we were standing over between the statue and the YMCA Building and they said that General Walker was there at the statue. We walked over there and I think he was standing there talking to some of the students or something, some of them were talking to him, and somebody told him to get up and give us a speech. He stepped up beside the statue, I don't think he stepped upon it, he stepped up right beside the statue and maybe up on the side of it or something and just talked to the students.

Q. Now, prior to the time he stepped on the statue and started to make a speech, were you in a position where [fol. 568] you could see what was occurring out there in the Circle area?

A. Yes, sir.

Q. Prior to the time he stepped upon the statue, was there any charge against the Marshals that involved a large number of people?

. . .

Mr. Gooch: To which we object as leading, suggestive, and calling for a conclusion and an opinion of the witness.
The Court: Sustained.

. . .

Q. Now, then, exactly where, with respect to the monument, was Walker when you first got over there?

A. When I first got there, he was standing down beside the statue, if I remember right, he was standing down kind of on the east side of it and I was standing on that side, I guess it would be the north side of the statue instead of the east.

Q. What attracted your attention to the fact that he was there?

A. Somebody told me that that was General Walker. I didn't know him.

Q. How far from the statue on the north side were you?
[fol. 569] A. I guess at the time they said General Walker was up there by the statue, I guess I must have been about, to the best of my knowledge, about twenty or thirty yards away.

Q. In which direction from the statue?

A. In the north direction of the statue toward the YMCA Building.

Q. Now, looking at the chart, can you see that the YMCA is north of the statue and slightly to the west?

A. Yes, sir.

Q. From that position could you see what was going on in the Circle?

A. Yes, I could.

Q. How long had you been in that area there that you have outlined just now?

A. I don't know, I had been in the Grove there inside the Circle, I had been in and out of there the whole time,

all the afternoon and a part of the night. And I was standing there, I guess, for five minutes.

Q. From the time the first tear gas was fired until you heard that Walker was coming on the campus, had you ever left the area so far that you could not see what was happening in the Circle?

A. No, sir.

Q. And up to that time had there been any charge at [fol. 570] all?

A. No, sir.

* * *

Mr. Gooch: I object to that as an opinion and conclusion. The Court: Sustained.

Mr. Gooch: And ask that the Jury be instructed not to consider it.

The Court: The Jury is instructed not to consider the last question and answer.

* * *

Q. Tell us what you saw and what occurred when you went over to see Walker?

A. I walked up there and I noticed he stepped up, I believe he stepped up on the side of the statue, and he was talking to the students and only two things stuck in my mind that he said in the course of his speech. I think he said at one time that this was not the correct route to Cuba, I remember that statement. He said there should be no violence used out here, that the students shouldn't use violence, that this was not the proper course to end this riot, and to better our relations here on this campus and everything. I thought he was more or less trying—

* * *

Mr. Gooch: I object to that, if the Court please, as a [fol. 571] conclusion.

The Court: You are talking about the balance of the answer?

Mr. Gooch: Yes, sir.

Mr. Watts: I wish Your Honor would look at the last sentence. Is that admissible?

The Court: Yes, sir.

A. . . . I walked off, I got a little mad with him.

Q. Was there any general reaction then of the crowd at any time during this speech as to whether they were pleased or displeased with what he was saying?

Mr. Gooch: I object to that as calling for an opinion and conclusion of the witness.

The Court: I think I will permit that.

Mr. Gooch: All right.

A. It seemed to me that most of the students were displeased. That was the general opinion that I got. I know several of the students standing around, a lot of them around me, began walking off from him.

Q. Did he at any time during this speech encourage or suggest to the students that they take violent action of any kind against the Marshals?

[fol. 572] Mr. Gooch: I object to that, leading and suggestive.

The Court: Overruled.

A. No, sir, he didn't. He didn't suggest it at any time, as a matter of fact, it seemed to me and a lot of the other students that he was trying to put down the riot. He said that violence shouldn't be used out here.

Q. Where did you go, you said you walked off, to what area did you go then?

A. I just walked off toward the YMCA Building and stood over there beside the street.

Q. Were you in a position where you could still see Walker and see what the crowd was doing?

A. Yes, sir, I was, I guess, fifty yards off from him or so and I was standing in the Grove, in the edge of the Grove beside the street across from the YMCA Building.

Q. By the Grove, you mean the Circle, where it says the Circle on this plat?

A. Yes, sir, inside the Circle.

Q. What happened after the speech that Walker was making at the monument?

A. Nothing.

[fol. 573] Q. That is after you went back toward the YMCA and from that position, what did you see happening?

A. Just the same thing that had been doing—been going on all the time, the crowd just broke up it seemed to me and people just went on doing what they had been before. While he was speaking a lot of people were still running around throwing bricks and everything, everybody didn't come in to hear him speak. A lot of people didn't know it, I don't guess I would have known he was up there speaking if someone hadn't told me.

Q. While he was speaking, were there still people down here in contact with the Marshals or in the general area where the Marshals were?

A. Yes, sir.

Q. Did you see Walker again after the speech on the monument?

A. No, sir, I don't think I did.

Q. After the speech on the monument, were you in a position where you could and would have observed had there been an organized large scale charge of as many as five hundred or one thousand people?

Mr. Gooch: To which we object, leading and suggestive.

The Court: I don't think I will permit that, counsel.

[fol. 574] Mr. Watts: All right.

The Court: At this point.

Mr. Watts: That is all.

Mr. Gooch: Go to page 19, please, Mr. Address, the last question.

. . .

Q. Did you see Rev. Duncan Gray or anybody else trying to talk to General Walker during the time that he was about to make his speech or was making his speech?

A. No, sir, I did not.

Q. Did you hear General Walker telling the students that Col. Birdsong was the one who had sold them out?

A. No, sir, I didn't hear that.

Q. Did he make any statement to that effect?

A. No, sir, I don't think he did. Not while I was there, he didn't.

Q. How long was General Walker's speech?

A. I don't have any idea how long he spoke. I was there, I guess, five or ten minutes, something like that.

Q. Were you there when he finished his speech?

A. No, sir, I was not.

Q. You had walked away?

A. Yes, sir.

Q. You don't know what happened to General Walker [fol. 575] after he finished his speech?

A. No, sir.

. . .

Mr. Gooch: Go to page 22, the last question.

. . .

Q. Did you hear General Walker allude to the fact that he was ashamed to be an Episcopalian?

A. No, sir, I didn't hear that.

Q. Did you participate in any of the missile throwing?

A. Yes, sir, I did, some of it.

Q. Could you see the Marshals at the time you were throwing at them?

A. Sometimes I could and sometimes I couldn't. The tear gas was so thick sometimes.

Q. Did you throw any before you heard General Walker make his talk?

A. Yes, sir.

Q. Did you throw any afterwards?

A. Yes, sir, I did.

. . .

Mr. Gooch: I believe that is all.

Mr. Watts: The deposition of Mr. McRae, page 3.

. . .

[fol. 576] Q. State your name, please.

A. Alpheus McRae.

Q. Your address, residence at home and school?

A. I live in Laurel, Mississippi, and I go to school here at the University.

Q. Who are your parents?

A. Mr. and Mrs. A. H. McRae, Sr.

Q. What school are you in?

A. Law school.

Q. What class?

A. Fourth semester.

Q. Were you a student at Ole Miss in September of 1962?

A. Yes, sir, I was.

Q. Were you present the night of the incident that occurred on the campus on September 30, 1962?

A. Yes, sir, I was.

Q. Will you outline to us, please, sir, where you were, what you saw, and what occurred and what you heard?

A. Yes, sir.

Q. From after the time the first tear gas was fired by the Marshals.

A. I was in front of the Peabody Building at the time the first tear gas bomb was shot. We were listening to President Kennedy on the radio, a girl had a small portable [fol. 577] radio and when the first tear gas bomb shot, we all turned around and saw it, and the next thing we knew two hit around where we were standing and we all left from where we were and ran in back—let's see, what is this?

Q. To get oriented, I will point out here this chart, Plaintiff's Exhibit No. 1, which shows the circle with the monument on the east, the Lyceum on the west, the Peabody Building.

A. We ran right back here behind the Fine Arts Center and then we heard a few more tear gas bombs being shot and we came around the Fine Arts Center over by the YMCA over here and went back out to the flagpole and there I met a girl from my hometown who was overcome pretty bad with tear gas and she asked me would I take her back to her sorority house which was down here on Sorority Row and by the time I got back everything was back—around where things were going on, everything was pretty much in a mess and people were just milling around and I met up with a bunch of my friends right around Rick Dormitory which is down from the Circle. We stood around there trying to see what was going on and then we left from there and went across the Grove here to University Avenue because some of the Marshals at that time were coming down this street here that the dormitory is on and we watched from down there and later on that evening we went up here to one of the professor's house who lives over [fol. 578] the railroad track, or he used to live there, to get a drink of water because we couldn't get back to our dormitory, we would have to go right through where all the rioting was going on and so we just tried to stay out of the way of as much of it as we could.

Q. Did you learn that evening that General Walker was on the campus?

A. The first time that I knew General Walker was on the campus was when we came back up University Avenue and saw a big crowd in front of the statue. When we got there I said, "Who is that talking?" I had never seen General Walker and I just knew of him. I had heard of him. Someone said, "It is General Walker." I decided I would go up there and see what he had to say. I was not there at the beginning of his speech but I assumed he had

only been speaking for a few minutes. I was there through the rest of his speech.

Q. Tell us the best you can remember what you heard?

A. When I got up there, he was talking about that we had been betrayed, he never would mention the man's name but he said or inferred that it was the head of the Highway Patrol that had betrayed us and had let the Marshals on the campus. I didn't know what kind of stand he was taking because I had known he was at Little Rock during that situation and I said, "Is he with the Government or [fol. 579] what?" I asked why he was there and so they said, "No, he is just here." Then I heard him say that we had a right to protest but that we did not have any right to violence and if any blood was shed, let it be on the hands of the Federal Government and not our hands, and then at that time there were a lot of students that were here—were in front of there, students and people, I don't know who, that booed him.

Q. Did you hear it?

A. Yes, sir.

Q. All right, go ahead.

A. This has been a good while ago.

Q. Yes, just do the best you can.

A. I can't really remember the rest of what he said that night. It was just along those same lines, and then he got down from the little statue there.

Q. Just before he got down did you know a little minister here, Rev. Duncan Gray?

A. Yes, sir, I know him.

Q. Did you see him there?

A. Yes, sir, he was standing on the left of the statue.

Q. To the left, would that be the north toward the YMCA?

A. Yes, sir.

[fol. 580] Q. Did he get upon the statue?

A. Yes, sir, I saw him try—I don't remember whether he actually got on the statue or not. I remember him trying to get up there and I remember somebody pulling on him and

then they lobbed one of those tear gas bombs and they lobbed it real high.

When Walker got down, I turned around and walked back and we were standing over there by an automobile and that thing lobbed right about as far as from me to you from where we were standing so we decided we had better get out of there so we went on back down to the bridge again.

Q. Were you close enough to the monument at the time you saw the minister there to tell or hear, or overhear, any conversation between him and Walker?

A. No, I would be telling a story if I said I did. I didn't hear anything.

Q. Just keep it absolutely accurate as to what you saw and what you heard and nothing else.

What occurred then after the talk on the monument that you saw?

A. I saw General Walker get down as I said, when he got through with his talk, and from his talk I thought he was telling us to calm down, now, that is the impression I got. So, I just turned around, I figured the whole thing was [fol. 581] over and so I got down and turned around and as I said, walked back to the car where I saw three or four people that I knew and I don't know where he went or what he did after that.

Q. Did you see which direction he got down from?

A. You mean he got down from the statue?

Q. Yes.

A. There was another guy with him and the last time I saw him he was standing with the other man that came with him.

Q. About how long was that after his speech that you saw him standing there?

A. A minute or two at the most.

Q. And that is the last time you saw him?

A. Yes, sir.

• • •

Mr. Watts: That is all.

Mr. Gooch: That is all.

[fol. 582] HAROLD JAMES SCHNEIDER, testified by deposition as follows:

Direct examination.

By Mr. Watts:

Q. What is your name, please?

A. Harold James Schneider.

Mr. Gooch: Wait a minute. May we identify this as being another deposition Mr. Watts took in Mississippi?

Mr. Watts: Okay. That is accurate.

Q. What is your residence on the campus and at home?

A. 1341 Leavell A 35, on campus and I live at Laurel, Mississippi.

Q. What is your school?

A. Law.

Q. What class?

A. Second.

Q. Were you on the campus the night of September 30, 1962?

A. Yes, sir.

Q. When the incident occurred?

A. Yes, sir.

Q. Were you in the area of the circle?

A. Yes, sir.

Q. Were you there when tear gas was fired the first time [fol. 583] by the Marshals?

A. I was over by the Fine Arts Center.

Q. Is that north of the circle, I am pointing now to Plaintiff's Exhibit No. 1, which is a plat of the University?

A. The Fine Arts is north of the circle.

Mr. Watts: I oriented you again. I will skip that question.

Q. What did you see and what happened then?

A. I ran down by Fulton Chapel and over towards Ricks Dormitory, right in here, and stayed there for a little

while. Then I came over and walked down through the grove by this Geology Building, the old building that looks like a tower, and then somebody said General Walker was talking up at this Confederate monument and I went on up there.

Q. What did you see?

A. He had already started talking and I stayed a little while and they shot some tear gas and I ran down University Avenue.

Q. Did you hear any of his speech?

A. Yes, sir, a little bit.

Q. Would you outline to us what you heard him say?

A. All I can remember is, he said something about a peaceful demonstration, that is all I can remember.

Q. Could you tell what the reaction of the crowd was to his speech?

[fol. 584] A. No, sir.

Mr. Watts: The next question I think is probably leading. That's all. Turn then over to the next witness on Page 3, a similar deposition, Henry Edwards.

HENRY EDWARDS, testified by deposition as follows:

Direct examination.

By Mr. Watts:

Q. What is your name, please?

A. Henry Edwards.

Q. Your address at school and at home?

A. Yes, sir. My address is Box 394, Richton, Mississippi.

Q. Who are your parents?

A. Mrs. Henry Edwards.

Q. What dorm are you in at school?

A. Leavell, 824.

Q. Were you on the campus the night of September 30, 1962?

A. Yes, I was.

Q. Were you in the area of the circle at the time tear gas was fired first?

A. Yes, I was.

Q. I wish you would tell us what you saw or heard and what happened.

A. You want me to start just before the firing of the [fol. 585] tear gas?

Q. Right.

A. I was standing on the front lines near the front of the Lyceum Building on the curb there and there was a large number of people there and it was just about dark and I can't tell you what caused it or anything and anyway the first tear gas was fired, into the group standing there, it was about 6:30 or quarter to 7:00, I don't know what time it was, whatever time it gets dark, and tear gas was fired into the group there and the group scattered way back into the grove there.

Everybody was scared out of their wits and of course the firing sounded like a large gun going off when it was first fired.

The people moved back and they kept firing tear gas then to scatter everybody out and the group moved way back to Hume Hall and the people began gathering bricks, stones and things up there, people gathered these and started throwing at the Marshals and the Marshals kept firing and the people kept throwing.

Q. All right. Tell us just exactly what your observation of the activities of the crowd was.

A. At what time?

Q. Go on and in natural sequence tell us.

A. There was no organized activity of any kind that I [fol. 586] saw any time during the night. People were just running back at random and gathering stones and anything they could find, rocks and bottles, where people would drop them on the ground, and of course if they could find a rock or a bottle or something, they would gather it up and go up into range of the Marshals and throw it and they kept

firing tear gas. It was just the same thing, it was a mad confusion.

Q. Did you ever see General Walker on the campus?

A. Yes, sir, I did.

Q. When and where?

A. I saw him near the monument and I would say the time was around quarter of 8:00.

Q. What was he doing?

A. At the time I was about 50 yards from there and I heard someone say, "There is General Walker or here is General Walker," so I moved down towards the monument there.

I got down there and it was a large group, I wouldn't say a large group, but a group of people around him and they were talking and carrying on and everybody was saying, "Lead us, lead us, here is our leader, here is our leader," and "speech, speech, here is our leader, here is our leader," and I stood around for a few moments there and people were still saying, "Here is our leader," and "speech, speech," and things like that.

He acted like he didn't want to give a speech because he [fol. 587] was talking about something else and he got up on the monument and he made his speech.

Q. Do you remember what he said?

A. No, I don't remember very much of it. He made some comment about Cuba. He said, "This is the long way to Cuba," or, "This is the wrong way to Cuba," I don't know which one it was, and the minister started getting up on the monument and I saw an arm and a shoulder reach up and pull him down.

Q. Did you hear any conversation between him and General Walker?

A. Yes, sir, when the minister was getting up on the monument, Walker asked him what was his faith and he said he was an Episcopalian and Walker said, "Well, he was, too, and that made him ashamed of his faith," or that he would denounce knowing him or something or other. He said that the people had a right to protest. He didn't

say what to say to protest or anything, he just said they had a right to protest.

Q. Do you remember anything else he said?

A. No, that is about all I can remember.

Q. Did you observe what he did after the speech?

A. Yes, I did.

Q. Tell us about it.

A. He dismounted from the monument there and in get-[fol. 588] ting back to the sidewalk there a group of people, not rushed him, but gathered around him real close and I couldn't get in that group, it was real tight, and they were talking to him and shaking his hand and things of this nature. I didn't get right up to him, I don't know what was said then. I guess this group around continued talking to him 10, 15 minutes, something of that nature.

Q. There was this conversation with respect to the monument?

A. It was on the side of the monument, I believe it was on the south side of the monument.

Q. Now this chart you are looking at—

Mr. Watts: And we oriented the chart.

Q. When he first got down there, where was he?

A. I believe he was on either the east or the northeast part of the statue there because I was standing on the east to get the advantage of the wind that was blowing in that direction that kept the tear gas off.

He would be on the east or the northeast part of the monument and he dismounted from that same side there and I believe he moved around to the south side of the monument and this tight knit group of people were still around there and they were talking and he was talking.

These people talked to him 10, 15 or 20 minutes, something like that.

[fol. 589] After that the group started moving, not in a hurry, no urgency, by this time the people had had some time to cool off and they had been in a terrible pitch before and they had had some time to cool off and there was no

urgency and no fast walking about the group as there had been before.

They moved up the sidewalk and then as they approached the flagpole, they swerved to the left and pushed on and there is a flower bed on the edge of the grove here. They stopped short of the edge of the grove and in the edge of the flower bed.

I remember the green flowers there were growing and blooming at that time. There was no activity of the group, there was no missile hurling and some guy on the front was waving a white flag of truce.

The Marshals recognized that this was something different from what had been happening and they stopped firing. There was no missile hurling on the front of the Lyceum Building and there was no tear gas firing. I can't say about the other side as to what was going on there but on the front there was no tear gas firing and no missile throwing at that time.

Q. Did you observe what Walker did?

A. As we walked up there sometimes he would talk and sometimes not, it was just a slow casual walk up there. He walked up there and stopped and a student, I assume it was [fol. 590] a student, came from behind the Marshals line and stopped in the middle of the street there and he said he had been inside and he had seen this Marshal that was cut on the throat and dying and he asked if a Senior would step forward and represent the group and nobody stepped forward and he said, "Will even a Freshman or a Sophomore step forward and represent the group?"

Some guy stepped forward, I don't know who it was; I don't have any idea, this guy stepped forward and this student pleaded with him to represent the group and to tell them all to quit rioting, that he had seen this Marshal inside that he was dying and what a sight it was with the blood and everything.

This student in the street pleaded to them and the general answer was, "No."

Q. The general answer was, "No," I don't hear too well?

A. Yes, the general answer was, "No," there was no expressed, "No, we won't give up," or anything but the people were just disappointed to see this person.

Q. Where was Walker during this time?

A. He was standing, not exactly on the front, but in the front. You can't say the front because sometimes there were people in front of him and sometimes he would be on the front.

[fol. 591] There was a front line there but you can't say he was leading it. I might have been leading it or anyone else that was on the front there might have been leading it because sometimes he would be ahead and sometimes we would be ahead.

Q. Go ahead.

A. After this the crowd sort of generally consented, "No," that they weren't going to stop fighting now, the group started moving back, just moving back slowly and as the whole group got past the flagpole, moving back towards the monument, some of the group filtered out and went back and started hurling missiles again and the Marshals started firing and the people started throwing, it was the same thing over again.

Q. Was Walker with this group when it went back to throwing missiles?

A. No, he wasn't. He was in the group that continued on toward the monument, and upon the shooting of the tear gas it was getting thick in there again and I stayed with the group a short while but the tear gas was getting thick there so I moved over towards the biology and engineering building in that direction, to get this cool wind that was blowing from that direction and the last time I saw Walker, he was moving towards the monument and in the direction of the monument and the "Y" Building there, in that direction.

[fol. 592] Mr. Watts: That's all.

Cross examination.

By Mr. Gooch:

Q. Now when you came down to the Lyceum, after you got to your dormitory, how many people would you estimate were around in front of the Lyceum?

A. In front?

Q. Yes, in front of the Lyceum?

A. I would say at least several hundred were in front of the Lyceum Building.

Q. Now was that before dark?

A. Right, before dark.

Q. And as the evening went on and the night came, the crowd did increase tremendously, didn't it?

A. Yes, I believe there was an increase in the crowd.

Q. What was the first evidence you saw of any actual disturbance any place other than people just standing out there in front?

A. Well, there were cigarette butts being flipped on top of the truck that was parked there and there were taunts and jeers and things, "Yankee go home," and things of that nature.

Q. And some profanity?

A. Yes, some. Quite a bit. Were—

Q. Were not pebbles being thrown?

[fol. 593] A. I didn't see any pebbles being thrown. There might have been.

Q. Now were you up near the front when the first tear gas was fired?

A. Yes, I was. I was standing on the front.

Q. What happened then?

A. The group just scattered; everybody was scared and they ran. A lot of them moved way back; some of them just scattered all over. After this first tear gas was shot, there were numerous other tear gas bombs shot off.

Q. The crowd got pretty mad, didn't it?

A. Yes, sir, it did.

Q. They were highly aroused, weren't they?

A. Yes, they were.

Q. And they began to arm themselves with bricks, sticks, stones and anything they could get ahold of?

A. Yes, sir.

Q. When they did that, what did they do with them, these sticks and stones and bricks that they had armed themselves with?

A. Well, they threw them at the Marshals who were lined up around the Lyceum Building.

Q. Describe how they threw them at the Marshals.

A. These people would just run up to within throwing range of the line of Marshals and throw them and run back [fol. 594] before the Marshals had a chance to hit them over the head with a billy stick or shoot them with a can of tear gas.

Q. You say General Walker made his speech about 8:00 o'clock?

A. That is right.

Q. Where did you say you were when you first heard that Walker was on campus?

A. I was in a south-southwest direction of the monument where the cool air was blowing in, the fresh air.

Q. Just what was it you heard about Walker?

A. I heard somebody say, "Here is General Walker, here is General Walker."

Q. People were excited about it, were they not?

A. Yes, they were.

Q. Had you heard any of his radio speeches or his television appearances?

A. I had heard something, I had not read it or heard it over the radio, some friend made some comment about Walker was supposed to bring some men or something of that nature.

Q. How many men did you hear he was supposed to bring?

A. I don't know.

Q. Did you hear the statement that he had 10,000 coming?

A. There was a large number.

[fol. 595] Q. A large number?

A. Yes, sir.

Q. What else did you hear Walker say?

A. I have already said that the people had a right to protest, he said that.

Q. Have you told us everything that you heard him say?

A. Yes, I believe so.

Q. You didn't hear him say about, "You've been sold out"?

A. Oh, yes, he did. Someone said, "Our Governor has sold us out, our Governor has sold us out," and he said, "No, your Governor didn't sell you out. It was Birdsong and the Highway Patrol Department."

Q. Immediately after he completed this speech, I believe you said he got down off the monument and started up the sidewalk towards the Lyceum Building?

A. No, sir.

Q. Towards the flagpole and the YMCA Building?

A. No, I said after he got down from the monument, then this tightly-knitted group of people got around him there and I didn't get up into the group to see what was going on, and they stayed there for five, ten, fifteen or twenty minutes or something of that nature.

These people were talking to him and after that, after a period of time, the group started moving toward the Lyceum Building up the sidewalk.

Q. And there was a group around him or with him, is that correct?

A. Well, he could have been with the group.

Q. Well, one or the other. He was with them or they were with him, is that right?

A. Correct.

Q. And they went up, they got almost to the flagpole and then he veered left, you say?

A. To the left.

Q. Then went past the flagpole on the left side, going to the Lyceum Building, that is your statement?

A. Yes, sir.

Q. Walked right on up and got to a flower bed just across the street from the Lyceum Building, is that right?

A. That is right.

Q. And that happened within five or ten minutes after he finished making his speech?

A. Something like that period of time there.

Q. What became of all this crowd that had been listening to him down there if they didn't go with him?

A. It was not a large crowd to begin with.

Q. How many?

A. I don't know.

Q. Did you say there was about 50 or 100 when you got [fol. 597] there and more probably came in?

A. No, I said 50 or 60 and I said more could have come and more could have left.

Q. Did that 50 or 60 go with him?

A. They weren't following him. He wasn't leading any group.

Q. I asked you if they went with him?

A. Yes, they were with him.

Q. Where were you at that time?

A. I was in this crowd.

Q. You were with the crowd. Did you have anything in your hand?

A. No, I didn't.

Q. Had you had anything in your hand down there that night?

A. I had rather not answer that.

Q. You won't say whether you had thrown bricks or rocks or sticks or stones or not?

A. No, I won't answer that.

Mr. Gooch: That's all.

Mr. Watts: Now I would like to go back and read some more of the cross examination he left out. It is rather short. Would you turn back to Page 20, please, sir. I think the last question Mr. Gooch read:

"Question: Did you hear the statement that he had [fol. 598] 10,000 coming?

Answer: There was a large number.

Question: A large number?

Answer: Yes, sir."

Q. Were you expecting him to come and bring those men?

A. No, I wasn't.

Q. Why wasn't you if you had heard it?

A. Well, because I am not a follower of General Walker and I have nothing against the man and I never have had anything for him.

Q. You realized, of course, that he is a public figure?

A. To some people.

Q. And he is known through the press and over the radio and over the television, is he not?

A. Yes, he is.

Q. His is a familiar name in the public?

A. It was not so familiar at that time.

Q. It is now?

A. Yes, sir, very familiar now.

Q. When you heard he was down at the monument, you went down there?

A. Yes, I did.

Q. Was there quite a crowd down there?

A. There was a group of people there, yes.

Q. How many would you say?

[fol. 599] A. I don't know. I was on the front again because I tried to find out what was going on and I was on the front there.

There were 50 or 60, I would say, when I first went up there and some more might have come behind me and some more to my left, I don't know, because I was looking ahead to him, looking toward him.

Q. How close were you to General Walker?

A. At that time I must have been 15 feet from him, or 20 feet.

Q. Did you hear the beginning of his speech?

A. Yes, I did.

Q. How long did he speak?

A. That is hard to say. I would say 10 or 15 minutes.

Q. Just tell us what he said during that 10 or 15 minutes?

A. It has been quite a while, I can't remember exactly what he said. He did talk about Cuba, he said, "This is the long way to Cuba," or "This is the wrong way," the word I could not hear because there was some noise, people milling around and everything.

He said that people had a right to protest and then the minister tried to get up on the monument with him and he asked the minister what faith he was and the minister said he was an Episcopalian and he said, "Well, this makes [fol. 600] me ashamed to know you," or "ashamed of you," or, "I denounce you," or something of that nature.

Q. What had the minister done or said to make him ashamed that he was an Episcopalian?

A. I don't know.

Q. Did you hear the minister tell him, "General, you can stop this if you would," or "help us to stop this"?

A. No, I didn't hear that.

Q. Did you hear anything like that at all?

A. No, I didn't.

Q. Did you hear the minister tell him that these people would go home if he asked them to?

A. I could see that the minister was saying something to him. I couldn't tell what was said.

Q. You didn't understand anything that the minister said?

A. Not that I recall.

Q. Didn't you gather that the minister was trying to get General Walker to advise the students to quit their demonstrating and go home? Wasn't that your impression?

A. I don't know, you can't tell about ministers.

Q. And you are not much for ministers?

A. Some.

Q. But you do know that General Walker said, "Here is an Episcopalian minister that makes me ashamed to be an [fol. 601] Episcopalian"?

A. Something to that effect, yes.

Q. What happened to the minister then, when he said that?

A. I saw an arm and a shoulder reaching up above the crowd and pulled the minister down.

Q. In other words, when Walker said that somebody reached up and pulled the minister down?

A. I don't know whether they pulled him down when he said that or whether he was just pulled down, I don't remember when he said it.

Q. Do you know what became of the minister?

A. No, I don't.

Q. What else did you hear Walker say?

A. I have already said that the people have a right to protest, he said that.

Q. Did he say, "You have got a right to protest, keep it up"?

A. I didn't hear him say, "keep it up," there.

Q. You didn't hear him say that?

A. I heard him say we had a right to protest. He didn't say protest by any manner. He didn't suggest any manner of protesting.

Q. He just said you have got a right to protest in any manner, is that right?

[fol. 602] A. No.

Q. What did he say about "any manner"?

A. He said that he said these people had a right to protest but he did not advocate any manner of protesting, he didn't say, "Go out and hit them with a brick," or anything of that nature.

Q. Did you hear him say, "I compliment you on the protest you have made," or "I congratulate you on the protest that you are making here tonight"?

A. No, I don't remember that.

Q. Would you say he didn't say it or do you say that you just don't remember?

A. I would say I don't remember.

Q. If Walker, prior to making his speech, walked up to the flagpole or in the vicinity of the flagpole and stayed up there for some time and observed what was going on up towards the Lyceum, looking towards the Marshals, did you see that?

A. No, I didn't.

Q. Where were you during the five, ten or fifteen minutes before Walker started to make his speech?

A. I was in the south-southwest direction near the biology and engineering department over there in the fresh air.

Q. You didn't see Walker up around the flagpole before [fol. 603] he made his speech?

A. No, I didn't see him up there.

Q. Have you told us everything that you heard him say?

A. Yes, I believe so.

Mr. Watts: Now skipping the rest of that, it seems to be repetitious, over further in the cross examination, a question by Mr. Gooch, Page 26. Let's see, I think, didn't he read the last question on Page 25, "Towards the flagpole"? I believe he did, according to my notes here, and he quit after saying, "These people were talking to him and after that, after a period of time, the group started moving towards the Lyceum Building up the sidewalk."

Q. You say that was five or ten minutes after he got down off the monument?

A. Something like that.

Mr. Watts: Page 26, second question.

Q. Something like ten minutes that the group got around him, how big a group was that, would you say?

A. The group that was right around him was just a small number of people, ten or twelve.

Q. As he started towards the flagpole and the Lyceum, other people fell in behind, didn't they?

A. No, the group was not led by any one person, neither was it led by any one group of persons. It was just a [fol. 604] casual walk, there was no hurry, there was no

rock throwing at that time, the group just ambled up in this direction.

Q. That is what you said. Now the thing I am asking you is not what kind of walk it was but five or ten minutes after his speech, he started up the sidewalk that led to the flagpole and the Lyceum Building?

A. That is right.

Q. And there was a group around him or with him, is that correct?

A. Well, he could have been with the group.

Q. Well, one or the other. He was with them or they were with him, is that right?

A. Correct.

Q. As they went up, they got almost to the flagpole and then he veered left, you say?

A. To the left.

Mr. Watts: I think he read the rest of that. I believe that's all.

The Court: Ladies and Gentlemen, we will recess until five minutes of 4:00.

(15-minute recess.)

[fol. 605] EDWIN A. WALKER, called as a witness by the Plaintiff, having been first duly sworn, testified as follows, to-wit:

Direct examination.

By Mr. Watts:

Q. You can't smoke in here. Give us your name please.

A. Edwin A. Walker.

Q. Where do you live?

A. I live in Dallas at 4011 Turtle Creek Boulevard, Dallas, Texas.

Q. Where were you born and raised?

A. I was born in Kerr County at Center Point, Texas, about sixty miles west of San Antonio.

Q. What year?

A. In 1909.

Q. What was your schooling?

A. I went to grammar school in Center Point about three miles from the farm house and then I went on to high school there and at Schriner Institute at Kerrville about thirteen miles away, the County Seat. And then to New Mexico Military Institute, where I finished high school.

Q. Was that where you and I first became acquainted?
[fol. 606] A. Yes, it was, I believe.

Q. Where did you go from there?

A. I went to the Academy, United States Military Academy at West Point.

Q. Did you graduate from the Academy?

A. Yes, sir, I finished there and was commissioned after completing the course, four years course at West Point, in 1931.

Q. Did you become a professional soldier?

A. Yes, when you are commissioned you have a certain requirement to do. Then you make a decision later and it is expected that you continue for the rest of your service.

Q. Did you attend various advanced service schools?

A. Yes, sir, I did, throughout my Military career. You continue going to school, Service schools in the Military Service.

Q. In what branch of the Service were you?

A. Well, my basic branch was Field Artillery. But I also went to the Air School and flew airplanes and then I also commanded an Infantry, as well. So it was—I got some of Air Force, Artillery, Infantry.

Q. Did you become a rated pilot?

A. No, I didn't.

Q. You were commissioned a Second Lieutenant, were [fol. 607] you?

A. Yes, sir.

Q. Did you—prior to World War II or shortly prior to World War II did you have any specialized training? That is, did you change your branch or your MOS in any way?

A. Yes, it was changed to the extent that specialized in guerrilla warfare, commando, airborne, and I even joined a unit that was ski trained, preparing for World War II in mountains; all these activities in mountain training, commando unit, they are referred to as commandoes often, rangers, or guerrilla warfare.

Q. In your early Army career, in the Lieutenant area, we will say, did you participate in any Army athletics in physical fitness programs?

A. Yes, sir, the Army in those days had quite a physical fitness program. They were rather strenuous and also, as a sideline I was continuously playing polo and training horses, riding until midnight.

Q. Did you and I have further acquaintance in those days?

A. Yes, sir, we did. We ran together a time or two on the polo field.

Q. And during the months immediately prior to World War II where were you stationed?

A. Well, they were moving us awful fast then, the [fol. 608] regular establishments, and I came back from Hawaii one month before Pearl Harbor, after two years had ended there, a two-year tour there. In those days it was foreign service because that wasn't a state. And I came back and was moved every four or five months, as we were moving, getting ready for World War II. I went to Augusta, Georgia, for three or four months, Camp Atterbury, Indiana. These were with different divisions, training and getting ready for War, and then Fort Clark, Texas, three different divisions.

Q. Where did you have your paratroop training?

A. At—I left the Fort Clark Division which—to go to Fort Ethan Allen, Vermont, a small station, and this unit was getting prepared to go overseas, a voluntary unit, for hazardous duty, and I joined it in 1943.

Q. Did you have combat experience during War time, World War II?

A. Yes, sir, I did.

Q. What was that?

A. In the Mediterranean and European Theatre. Also in the Asiatic Theatre.

Q. Were you the recipient of any decoration?

A. Yes, I was.

Q. Very briefly, just start at the top and give us two or three of them.

[fol. 609] A. Well, the Legion of Merit, the Bronze Star, the Silver Star, the Ulchi Medal from Korea, the Croix de Guerre, French, and the British Medal, and the Norwegian Order of St. Olaf.

Q. Did you have combat service in Korea?

A. Yes, I did.

Q. With what unit?

A. With the Division Artillery, commanding the Second—the Division Artillery of the Second Division, and the Infantry Regiment. I was a Division Artillery commander, and then an Infantry Regiment of the Third Division, the Cotton Balers, Seventh Infantry of New Orleans, the Cotton Balers. That goes back to the Revolution.

Q. When did you come back from Korea?

A. I came back from Korea in '53. I went over in '51.

Q. Was Korea in those days classified as a theatre of warfare?

A. Well, the overall out there was a theatre, with overall headquarters in Japan. And it was referred to as a police action.

Q. Who was your commanding general? I mean your commanding general in Japan?

A. A General Mark Clark was there most of the time.

[fol. 610] Q. And who was his superior? Under whom did you ultimately—who was above Gen. Clark?

A. General Clark was to the—to Washington, D. C., the Joint Chiefs of Staff.

Q. Was General MacArthur in the chain of command anywhere?

A. General Macarthur had just made a speech or two on the Pacific Coast on his return after his release and—one speech, I believe, out there.

Q. Well, to shorten it a little, did you serve under General-Macarthur in Korea, or had he already been released?

A. No, the effects of the policy in what had come because after the release, because I went over there immediately thereafter.

Q. I see. Now, then, after returning from Korea did you have Military Service in America, and particularly were you given any command in the Fourth Army area?

A. After my return from Korea I went directly to Fort Bragg, North Carolina, as assistant division commander of the Airborne—82nd Airborne Division.

Q. Then where?

A. Then I went back to Formosa, as advisor to the Commander in Chief of Chiang Kai-shek's Army. Then from there I came back to Hawaii and served for a year and a [fol. 611] half as Division Artillery Commander in the 25th Division that was stationed in Hawaii.

Then from there I came to the United States and was assigned to—this was, now, '57 and I was assigned to the District Command, command of the troops, the reserve district of the entire State of Arkansas, and there I was stationed in Little Rock.

Q. Was that the 19th Corps in those days, or do you have the correct designation?

A. Yes, it changed while I was there. We had to reorganize it. I was briefed on this reorganization out of Fourth Army Headquarters which is at home, went down, I was on leave at home and I went down to Fourth, to the headquarters and got briefed on the necessity of reorganizing this whole district structure.

Q. Where was your headquarters at that time?

A. My headquarters was right in the City of Little Rock.

Q. After the reorganization were you and I in further contact?

A. Were you and I in any further contact?

Q. Yes, after you reorganization at Little Rock?

A. Yes, I used to see you from time to time on Military activities with respect to going and going around through [fol. 612] the states, because we reorganized and extended the command from then just the Little Rock area to several states, to include a portion of—oh, I forget which, but there were several states involved, part of Louisiana, Oklahoma and Arkansas.

Q. Did any unusual incident of a semi or Military or semi-Military nature occur while you were Corps Commander at Little Rock?

A. Yes. There was the incident that the Military referred to as Operation Little Rock, and that came about a month, say a month or so—I got up there about the latter part of August and I think this came about about a month later in '57.

It was referred to as Operation Little Rock by the Military Service in the plans and this—there was no planning for it at the time. I went there strictly as District Commander to command the reserve, the Reserve District of Arkansas, and this was the integration requirement on Central High School that began around the 27th of September, or 28th, sometime within a few days of that area.

Q. What was your rank at that time?

A. I believe I was just promoted to Major General with my second star, as I went to this—to Little Rock, because when I came out of Hawaii it is a One Star job to Command [fol. 613] Division Artillery, so I am sure I must have gotten a promotion just about that time.

Q. And when you were first assigned that command did you have any regular troops under your command? That is, regular Army combat type troops?

A. No, in that command you only have the reserves of the state. These are the people in the state that are doing business all over the towns and communities and about their requirements in general, it is two hours at night a week of training at the Armory, and they are strictly busi-

nessmen, and everybody in the community that are in the reserves.

And they train two hours a week in the Armory and then they have two weeks training requirement in the summer, usually where the organization gets off and goes to a regular Army post and trains in the field, or whatever its requirement is, depending on what type unit it is.

Q. In connection with your Operation Little Rock, did you have any combat type troops transferred to your command?

A. Well, there was a few regulars, to go back on the other question. My headquarters was set up with about fifteen people that were on permanent duty keeping the headquarters running, fifteen or twenty, say, in our requirement. It took that to keep the staff organization up and [fol. 614] fulfill the requirements to the State people, the reserves.

Now, your question with regard to—

Q. At the time then of the operation at Little Rock were any combat type regular Army units attached to your command?

A. Yes, there were. There was an organization that came from Fort Campbell, Kentucky, part of the 101st Airborne Division.

Q. What was the strength of that unit?

A. Pardon? That unit was finally decided to be 1,000 people.

Q. How long did it remain under your command in Little Rock?

A. I would guess that was—I can't say definitely, but pretty close to the end of the school year. Maybe just after the school year—I believe—I believe certain portions we began to send back earlier than that. We would get 150 or 200 men back, and they were always very anxious to get out and get back, and they were always wanting to get back to their regular training. They didn't like what we were doing, and we were anxious to get them out, the regulars,

get them back to their normal job. And so we were getting them out just as much as we could.

It would have been somewhere between, say, April and [fol. 615] the end of the school year. I think there were still a few of the regulars there at graduation.

Q. Were you assigned a mission as commander of those troops?

A. Yes, I got the command by being the senior officer in the state. I was designated as commander when they knew that Federal forces were going to be used in Little Rock. I was designated as commander, then the senior member in the state, actually while the press kept saying I commanded the 101st Division in Fort Campbell, Kentucky, I didn't at all.

I took command of these troops, these troops came under my command as they flew across the state boundary into Arkansas and landed there at Little Rock in the outskirts of town at the—I believe they landed out there at the airport ten or twelve miles from town.

Q. Was this 101st Airborne Division the whole division or just a task force out of the division?

A. Well, in a form it is a task force, because you don't get just 1,000 men from any organization in the Army. It was sort of a made up task force, for what the requirements would be to fit the mission, that particular mission.

[fol. 616] Q. While you were performing this mission, was there any violence of any kind that occurred?

A. Well, there was one minor incident, I remember, one very minor incident.

Q. Was there anything that occurred in the nature of a riot or anything like that?

A. No, there was no rioting. There were some antagonism and some people standing and protesting. There was quite a protest at Little Rock, at Central High School, quite a protest.

And I think there could have been violence. In fact, in Washington, when I was—

Q. Just a second. Let's don't get to Washington. Might be here the rest of the day.

Continuing then with the aftermath of that incident, did you have any contact with the Department of the Army after that, after the incident had terminated?

A. You mean the entire military operation?

Q. In simple language and to shorten this, did you try to resign when that was over?

A. Oh, yes, I turned in my resignation before I left Little Rock.

Q. Was it accepted?

A. No, it was refused. It was—I was called in and they—
[fol. 617] Q. Was your tour—excuse me?

A. They wanted me to explain why and I told them why—

Q. No, you don't know why—

A. —and they refused—

Q. I think you understand from the trial this far all you can testify is what went on in your own mind, not someone else's.

Did your tour of duty terminate at Little Rock?

A. Did my term—

Q. Did you terminate that tour of duty in Little Rock and transfer somewhere else?

A. Yes, in '59, I was ordered to, 1959, I was ordered to Germany to command the 24th Infantry Division.

Q. And did you assume that command?

A. I did.

Q. And without getting too much into detail, did you have, while you were on that assignment, did you have some incident or misunderstanding with anybody that resulted in national publicity?

A. In Germany?

Q. In Germany?

A. Yes, I did. After 17 months with the Division—

Q. Just very briefly, what was the general nature of that?

A. Well, I was attacked by the press, stirred it all up
[fol. 618] over what was a paper in Europe. It's an English paper, incorporated in Maryland—

Mr. Watts: Just a moment. He wants to—

Mr. Gooch: If the Court please, I move that the answer, that he was attacked by the press, be stricken as not responsive; it's wholly irrelevant and immaterial to any issue in this case.

The Court: Sustained.

The Witness: Well, can I say I was attacked by a newspaper?

Mr. Watts: No, wait just a minute.

The Witness: Maybe I should have said a newspaper.

Mr. Watts: No, hold on just a minute. You listen to my question, Mr. Witness, and for once in your life, now, I have got command over you.

By Mr. Watts:

Q. So if you will, just try to understand my question and answer it very simply, why, I think we will get along pretty fast.

Did some adverse publicity that caused you to become involved in nation-wide newspapers appear in a newspaper, the Overseas Weekly?

A. Certainly did.

Mr. Gooch: If the Court please, we object to that. Irrelevant and immaterial to any issue.

The Court: What is the materiality, Mr. Watts?

[fol. 619] Mr. Watts: The materiality is, if Your Honor please, about this time there was a, the start of what expanded into a running feud between this witness and the press.

The Court: Yes, but how was the Associated Press involved in that?

Mr. Watts: They were, as would come out later, they gave him a pretty rough time.

The Court: Well, I'm not going to permit it until there is some proof.

Mr. Watts: All right, sir. We will have another look at it before I go back into that.

By Mr. Watts:

Q. Were you relieved of your command in Germany after a telephone call with some official in the Pentagon?

A. Yes, sir, I was. I was relieved and moved to the higher headquarters up at Heidelberg.

Q. And from there, where did you go?

A. I was in that headquarters about, from April to November, and was assigned in October to the top training in operations in supervisory job of the entire Army in the Pacific, in Hawaii, the Theatre Headquarters in Hawaii.

That assignment was—came in October.

Q. Now was that in the nature of a demotion or promotion?

[fol. 620] A. Well, that was a higher job than I had been in training and supervision of troops because it included all the Army troops in Laos, Vietnam, all the Southern Pacific Area.

Q. After you were relieved as Commanding General of the 24th Infantry Division, were charges of any kind instituted by anyone against you, investigation?

A. None at all.

Q. Were not. Was any investigation held by a military authority?

A. Yes, sir, it was what we call in the service a preliminary investigation but that it—it's an investigation which has to be repeated to even prefer charges.

Q. Was any punishment of any kind imposed upon you?

A. No, there wasn't.

Q. Did any—well, strike that. That may be a little off the target there.

Where did you go from Germany then?

A. From Germany I came back to the United States and had a couple of periods of three weeks' leave and I was due reassignment in the States.

I had had my full tour of duty with the Division, you might say, except for being relieved. I had served longer than the previous 20 commanders that had commanded it, with the Division, before I was relieved.

[fol. 62f] And I came back to the States and went to Heidelberg, to the Central Army Headquarters there.

And then that lasted until about—I took a couple of leaves to the United States for three weeks and the second time, why, my orders were—everything was re-arranged so that I was—didn't go back.

Q. Was any action taken by any headquarters, either Department of the Army or European Headquarters, to initiate an investigation of your actions while commanding general of the 24th Division?

A. Oh, yes, that was initiated—I remember the date because it was—my relief was the same day in Germany, I—on April the 17th, that the Bay of Pigs failed.

Q. But in a different year?

A. The same year.

Q. Sir?

A. It was the same year, my relief, '61, April the 17th, was the day the Bay of Pigs failed and that's the same day I was relieved in Germany.

Q. Now then very briefly without getting into the details, what was the basic issue that was involved in this investigation of you that attracted national publicity?

Mr. Gooch: If the Court please, we object to that as being irrelevant and immaterial to any issue in this case.

[fol. 622] (Conference at the bench.)

Mr. Watts: All right, sir. I will be very brief.

By Mr. Watts:

Q. Very briefly now and without getting into any politics or philosophy or anything that might keep us here the rest of the week, you just tell the Court and jury very simply what that issue was for which this investigation was initiated.

A. Well, may I ask a question? Does that previous objection hold?

Q. Yes, that previous objection holds. You just tell the Court and jury—

A. Okay. We were involved over the training program of the 24th Infantry Division.

Q. And in simple language, what was the objection to your training program?

A. I considered that all soldiers should know who the enemy was and I thought the enemy was where it is and where everybody refers to it. I was teaching them all I could about that enemy and what I thought they should know about it.

In this type of warfare, why, everybody's got to know it down to the last soldier, even the Lieutenant, because in this type of warfare today, why, everybody may be on his own anywhere and every Lieutenant or every Sergeant may be responsible for the lives of 15 or 20 men, cut off, not seeing anybody for 10 or 15 days, he's got to make his [fol. 623] decisions about whether he would rather be a prisoner like they were in Korea and—I guess—nobody is supposed to be a prisoner, don't think I am advocating that.

But those decisions, when you are cut off 15-20 days under the most dire hardships, why, certainly people would have to make their own decisions.

Q. Now that's enough on that. I think you have covered it. Now let me ask you if that training program of yours was given a name within the Division?

A. Yes, it was referred to and got quite a bit of run across the press here, as the "Pro-blue program."

Q. Pro-blue program?

A. Right.

Q. Now what was the effect of that training program on the 24th Division under your command?

Mr. Gooch: If the Court please, I hate to object—

Mr. Watts: This is very short, if Your Honor please.

Mr. Gooch: I see no materiality about what effect anything had on the 24th Division.

The Court: I will permit it.

By Mr. Watts:

Q. All right, sir. Go ahead. You are permitted to tell what you observed, the effect of this training program to be on the training of this Division. Keep it short.

[fol. 624] A. I observed the best Division in the United States Army when I got through with them—and I wasn't half through.

Mr. Gooch: I renew my objection.

A. And it raised the morale, it gave the soldiers an objective, as it does young people, and it gave them a purpose for being overseas away from their families with great sacrifices.

Q. How did your church attendance program react?

A. Church went up—attendance went up about five-fold.

Q. What happened to delinquencies?

A. I worked, talked to the Chaplains once a week about—by the hour.

Q. What happened to the delinquencies after you initiated the program?

A. Delinquencies went down. The Division was holding the record in Germany for the delinquents. Had the least record of delinquency.

Q. I believe that's all. Now then were you punished in any way for this program that you had initiated and carried through in your Division?

A. No, but I think everybody—this is all on reflection. I was certainly not punished. There was no position to punish me for—

[fol. 625] Q. What action was taken by the Department of the Army or your Superior Headquarters?

To shorten it, did you receive—

A. After an investigation, 900 pages and 267 exhibits, where you sit down in a preliminary investigation and discuss all your psychology and what you think with an investigating officer, who's one promotion above you—

Q. Three-star General?

A. Yeah, three-star.

Q. General Brown?

A. Sir?

Q. General Brown, was it?

A. General Brown.

Q. All right. Did you receive any punishment? Yes or no?

A. No, I did not.

Q. What action did General Brown's investigation result in?

A. Cleared my training program. It had been cleared a month after it was written by the next higher command, the next—the star above me had cleared it within three weeks and told my boys it was the best program in Europe.

Q. And where did you go from there?

A. Well, where did I go from there?

Q. Yes, sir.

[fol. 626] A. Well, this investigation mostly took place in Europe and by this time—this was through the period I was at Heidelberg at the Army Command Headquarters and then I took some leave to the States and was in the United States for these leave periods and then the second leave, I didn't go back. It was all arranged.

And I was due to come home. I was awaiting orders all the time I was at this Army Command Post back to the States: My tour of duty over there was up.

Q. In short and simple language, did you resign?

A. Yes, I resigned.

Q. What's the difference, on the termination of a professional Army Officer's career, between a resignation and a retirement?

A. The difference is, when you retire, that you have available to you and it's—you get all your benefits and your retired pay and all your fringe benefits, like medical, hospital and post exchanges and so forth.

Q. Were you ever—

A. When you resign, why, you cut off all that. That is no more. You have no rights to any retired pay or any

fringe benefits, medical or post exchanges or anything.

Q. For your then rank, what were they, roughly, in amount?

A. About \$15,000 a year.

[fol. 627] Q. Have you drawn one dime from the Army since your resignation?

A. No, I haven't.

Q. Or from any Governmental source?

A. No, I haven't.

Q. Now since that period of time, have you engaged in activities that have resulted in your name becoming apparent to the American public in various newspapers, magazines and other news media?

A. Yes, several activities.

Q. Have you, since your experience in Germany, had any conflict with reporters connected with the Associated Press?

Mr. Gooch: If the Court please, I believe the issues in this case are limited to the Savell story.

Mr. Watts: I thought General—

Mr. Address: There is malice, Judge—

(Conference at the bench.)

The Court: Go ahead, Mr. Watts.

By Mr. Watts:

Q. After you resigned from the Army, where did you go?

A. I went to Center Point.

Q. Was that your family home?

A. That's right, where my father lives and my brother.

Q. Live on a ranch?

[fol. 628] A. What we call a small stock farm.

Q. How long did you stay there? Oh, roughly.

A. A month and a half or so until I moved to Dallas—month, maybe.

Q. Where did you go?

A. I moved to Dallas.

Q. And has that been your home since then?

A. Yes, sir, it has.

Q. Now did you have some type of a venture in politics?

A. Yeah. Yes, sir.

Q. You have held no public office?

A. No, sir.

Q. Now did you have an occasion in September of 1962, to go to the State of Mississippi?

A. Did I have a what?

Q. Did you have occasion in the latter part of September of 1962, to go to Mississippi?

A. I went to Mississippi in the latter part of 1962, right, in September.

Q. And prior to that time, had you been to Mississippi, for instance, making speeches or any—

A. Yes, I had been to Mississippi. I made a speech over in Mississippi either in December or January of sixty—well, it would have been December, '61, or January of '62. I can get the date but I don't know—I don't—it was six [fol. 629] or eight months before the September, '62, trip.

Q. Now did you learn from either the press or any other source that along in September, an incident involving the possible use of military force was building up in Mississippi?

A. Yes, sir, I did.

Q. And what parallel was there, if any, between what was developing there and what you had experienced in Little Rock?

A. Well, there was quite a parallel over the use of military forces, was building up. The question became whether there was going to be military forces used just as it was over in Little Rock, whether there was going to be military forces used. And I had set in on the military side of the decision, whether the military forces would be used in Little Rock in September of '57.

[fol. 630] Q. And at that time did you make any type of investigation or study of the Military—the impact upon military forces of this type of duty?

A. Oh, I would say yes, definitely. It wasn't a formal study, but with all the staff meetings and all the contact you had to have in the Military you certainly came out with a position with respect to the whole situation and what you had to understand, the whole constitutional process to be able to tell how any soldiers could operate or would operate.

Q. And did you develop any personal concept as a result of that experience toward the use of Federal troops within the borders of the states, for purposes of this kind?

A. I certainly developed a concept with respect to the use of Military forces in strictly civilian domains and under civilian problems, and what is the civilian traditional method of handling our processes.

Q. Did you have any contact or—strike that.

When did you consider the possibility of personally going to Mississippi? That is with respect to the end of September?

Was it the first, middle or last part of September, or was it the previous month.

A. I am back on the other question. I don't think we [fol. 631] completed it.

Q. That is all right. Let me worry about that.

A. Okay.

Q. You let me worry about that; you answer the question.

A. Say about the 25th or 26th of September of 1962 was the decision, when I made a decision that I would go to Mississippi, but only if Federal troops were used.

Q. And did you, pursuant to that decision, make any public utterance?

A. Yes, through that period I had made some public utterances.

Q. What was the first of these public statements you made? I don't mean the exact time, or just tell us where was it? Or to simplify it, was it in Shreveport or some—was it over the Party Line Station at Shreveport?

A. It could have been. I would have to refresh my memory. There was three or four or five I made a week, and it may have been over Party Line Station. I made one statement over Party Line Station from Shreveport, Louisiana; then from Dallas.

Q. You heard Mr. Gooch's opening statement, the statement that you had sought out the press and insisted on giving numerous statements to the press. Tell the Court [fol. 632] and Jury exactly what occurred?

A. Over the statements?

Q. Yes. Did you seek out the press or did the press seek you out, or both?

A. Sometimes you would find I would ask them if they would want a statement, as I had for months, and months and months, and sometimes they would come to me and ask for a statement, and sometimes neither, and sometimes they would complain, "You don't tell us you want to make a statement, how do we know it?" And sometimes—most of the times they don't print what I say anyway, so you don't know where you stand with the press.

Q. Did you have any personal acquaintances within Mississippi you talked with over the developing situation there?

A. Yes, I had some friends over in Jackson.

Q. Were they people with whom you had had contact during the previous speaking engagements?

A. Yes, sir, people that I had met and that I knew on different trips to Mississippi.

Q. Without getting into too much detail, just tell us what you did in preparation toward making up your mind whether you were going to go to Mississippi or not?

A. Well, all during this period there was much discussion about Mississippi, the sovereignty of the state, the [fol. 633] violation of the Constitution, the Governor's position, and so forth, and my interest extending from Little Rock, even went back further than that. My interest during that month if they—I recall hearing that month that Cuba was very, very hot and serious in the news.

And this was taking most of my interest through this period, this August-September period.

Q. Did you—

A. And we were working on all the information we could get on Cuba. It was obvious in September that there were missiles being placed in Cuba. And it is also obvious, by releases in the press and the headlines that Cuba was getting and the statements that were going back and forth and the reports on Castro, it becomes perfectly obvious, even by the statements of officials in Washington, that Cuba—that there were missiles in place, and supposition that there was, and there wasn't any doubt of it; and that Military forces, foreign forces were moving into Cuba.

Q. Now, did you talk to somebody in Mississippi?

A. At what time, please?

Q. Shortly before September the 30th? To simplify the thing so it won't take too much time, didn't you or not call Dr. Ney Williams, or did he call you?

A. Yes, sir.

[fol. 634] Q. That is what I am trying to get around to.

A. Yes, I called Dr. Ney Williams several times, probably. Every now and then I call him, maybe once a month, or I might get a couple of calls in a week, just like I call a lot of people.

I called Dr. Ney Williams sometimes three or four times a week, say around the first week of September.

Q. Were you in contact with him one or more times since then, between then and September 30th?

A. Yes, I called him. We were, I believe—say Friday, the 28th.

Q. And what—did you make arrangements of any-kind?

A. Yes, we discussed what was going on. Now, we are getting down to the area of—close to the area, say, between the 25th and 30th, right?

Q. Yes, sir.

A. All right. In this area I may have talked to him a day or two before. I can't remember. But it wouldn't have made any difference because the whole conference was

about—getting information about what was going on in Mississippi with regard to the situation there, what is happening and what the people in Mississippi think, and what he knows about the Governor's situation and what has been said. And I think I even asked him to subscribe to a [fol. 635] paper, the Jackson Ledger, for me, and I—we made—say the Friday, then, we would have discussed over the telephone conversation, I probably got so interested in what was going on over there, and the statements that were beginning to look like there was definitely going to be used the Military forces, Federal forces, in some form.

Q. Did you approve of the use of Federal forces in some form in Mississippi?

A. Well, it wasn't my position to approve anything, but I was interested in the use of Military forces.

Q. That is what I am talking about. Did you approve or disapprove of the concept of using Federal Military forces in Mississippi?

A. Yes, based on what I think, I don't think the Military forces, and it is pretty hard on moral and they don't like this business in which they are not used for what they are for, and I think it takes more than we have done in this set up to establish the right of the Federal Government to march in with bayonets, either 1,000 or 20,000 troops, Little Rock or Oxford.

Q. Did you make arrangements with Dr. Williams that you might go to Jackson?

A. Yes, sir, in the conversation back and forth it was about what the situation was. I said, "I will probably come over," and hinted to him to find me a place to stay.

[fol. 636] "Probably come over," and talk firsthand with him about it.

Q. Did you go?

A. Of course, at that time I focused on the whole state of Mississippi. I went—

Q. Wait just a minute.

A. I say I went about—well, that would have been Friday we were talking about?

Q. Right.

A. So it would have been Saturday I went over there, on the 29th, to Jackson.

Q. At that time did you have a present intent to go to Oxford?

A. Certainly not.

Q. How did you go?

A. I flew to Jackson in a friend's plane.

Q. Would this have been on Saturday, September 29, 1962?

A. Yes, sir.

Q. All right. Take it from there on and just tell the Court and Jury what happened the rest of the day and that night.

A. The rest of the day and that night, I landed, I guess it is an hour and a half, I have forgotten the time I left Dallas, but a friend had an airplane.

[fol. 637] As I remember, he and I were in it, and we landed in Jackson about, say between 11:00 and 12:00 o'clock on Saturday. This the 29th of September.

And this friend, Dr. Ney Williams, met me at the airplane, and, as I remember, he was by himself with a car, and he took my friend, who owned the plane and myself to lunch.

We sat around the table and talked and I had discussed—he asked me if I wanted to go to the football game that night and I said yes, I would go to the football game with him. And he finally said, "Well, I will put you up, you can stay right here at the house."

I said, "Well, I better stay somewhere else." I didn't want to cause him any trouble. And he said, "No. I want you to stay here at the house."

So the idea was, I would spend the night after the football—this was a 8:00 p. m. football game at night. Ole Miss was playing, I believe it was the University of Kentucky that night. And we went to lunch.

Q. Who was the friend that took you over there?

A. Joe Allred.

Q. All right. After lunch what did you do? Very briefly. You are not into the lawsuit yet.

A. Cafe for lunch, and he, knowing I was going to the football game, he had a couple of tickets, as I remember, [fol. 638] but they were not together, so we stopped at a place or two in town to get the tickets together. I didn't go in. He said he had to straighten out the tickets, and then we on down to a printing company which—where the man—the friend that had the airplane, either Mr. Williams wanted him to take something back to Dallas, I believe it was, or maybe—I didn't pay much attention to it, I didn't go into the printing company, but this pilot picked up something there, and we parted from him there and left him so he could—he was going on back to the airplane. And I went on with Dr. Ney Williams to his home.

Q. Did you meet Louis Leman there?

A. Well, Louis was either there, or I believe he was there, or just arriving, or something, right.

Q. Had you had some kind of previous 'phone call with Louis that brought him there?

A. Yes, he had called me from Mississippi and said that he was over there and we had discussed what the situation was and I said, "Well, if you want to talk to me . . ." I believe there were two telephone calls involved, and finally he found out definitely, I said, "If you want to see me you can come on down to see me at Jackson." He asked me when I was getting in and I probably didn't know the first call and later I did and I told him and he showed up at—said, yeah, he would come on down.

[fol. 639] Q. Now, then—

A. We met at Dr. Ney Williams' house.

Q. Did you spend the afternoon at the Williams' house?

A. Yes, we spent the afternoon.

Q. And what did you decide then, or what did you do?

A. Well, there were—Dr. Ney had his call coming in and out about the situation and we discussed the situation, what was going on with respect to Mississippi and the possibility of the use of Military forces, and how far they

had been committed, or if they had been committed, with respect to the decision to commit them, and what plans had been made for their commitment, and what they knew about it over there.

Q. Did you finally learn troops had been committed or would be?

A. Yes, during that afternoon why it became very obvious that Military forces had been committed.

Q. And what did you do then?

A. To a Military operation.

Q. Did you—

A. Toward Oxford.

Q. The question was: What did you do then?

A. I had some coffee.

Q. After you finished what did you do? I am not trying [fol. 640] to trap you. Did you and Louis Leman go to Oxford?

A. Well, I am not too sure.

Q. What time?

A. Yeah, but that is later. What did we do then? We had a press conference. People were calling about a press conference, and we went to some place called the Sun & Sands Hotel, or motel, I believe. That was about 6:00 o'clock. I gave—I made—I talked to Ney and his wife and we discussed telephone calls that were coming in to him and he got a call from Oxford from somebody, and there was a little excitement over a call that he was getting that somebody thought that Meredith was being moved in that afternoon, and he called a friend, I believe, in the radio station and asked him if he had heard anything. And this sort of thing, as we sat around in the parlor and I had moved my suitcase in to spend the night, and I would say about, say, somewhere between 4:00 and 5:00, that I wasn't going back; that there had been enough definite information on commitment of Military that there was going to be something definitely in the use of Military forces and we, in the meantime the press had called, and we gave them the final answer on the press conference at the Sun & Sands,

and we were supposed to be there at 6:00 and Ney went on with his wife to the football game, as I remember, and we told him I wasn't—I wasn't going, and I gave him his [fol. 641] ticket back.

Q. You say you were supposed to be over there at 6:00 o'clock?

A. Sir.

Q. You say you were supposed to be over there at 6:00 o'clock, over where?

A. At the Sun & Sands Motel for the press conference.

Q. Did you show up?

A. Yes, sir. A little late, I think, because the traffic was so heavy and we had to cross a lot of this football traffic.

Q. Did you have a prepared statement for the press conference?

A. As I remember I did have a prepared statement.

Q. You still have a copy of it?

A. Should be in some of the files.

Q. And did you give that statement to the press personnel there at the conference?

A. As I remember, I did, right.

Q. And how long did that conference last?

A. Well, there were sort of two parts to the conference and it didn't last—I would hope or guess or say—over fifteen or twenty minutes, I guess, at the most, getting in and out and away from it.

Q. What were the two parts?

[fol. 642] A. Well, the first, you went into a TV room and there were two, as I remember, legged cameras there, these three-legged TV cameras. I think there was two but it was obvious it was a set-up in all this light, and the set-up is to question you and twist things around as much as you can.

I recognized this. That is why I usually prepare a statement. I prepared a statement and gave it to them. I don't remember, the man may have questioned me a time or two. I may have answered or I may have not, but I know I got mad at him because I didn't like his questions. They were

vicious. So I turned around and walked out right in his face, and walked out in the hall and there were six or eight others there.

The TV man was taking over, of course, and I walked out in the hall and got around the other people and let them ask their questions so the press could get a chance and not let the TV take advantage of the newspaper people and the local boys, right?

Q. I don't know. Did you call that press conference, or did the press call it?

A. Well, I actually don't know. I didn't—we talked about a press conference and I have got many friends in Jackson. When you go over to Jackson they always want to talk to me and I have got a lot of friends in the press over there [fol. 643] and Mr.—Dr. Ney talked to a press man. I can't tell you how that got arranged, whether it was on his instigation or out of the house we were in or whether it was that they heard I was there and asked him if I would hold a press conference, or not, it could work either way.

[fol. 644] Q. Where did you go after the press conference?

A. I went to—we went back to Dr. Ney Williams' house.

Q. How long?

A. Well, by this time we were getting through the press conference and had made early in the afternoon a commitment of troops and I had made statements that I would go to Mississippi if there was a commitment of troops.

Q. But the question was, how long did you stay at Williams' house after the press conference?

A. I went over—I went there, oh, I guess we were there half an hour or so getting a last message or whatever Dr. Ney had left for us and telling the maid goodby and thanking her for the coffee and getting our bag back in the car and—

Q. Where did you go?

A. —getting in the car. We started then—

Q. Hold it just a minute.

The Court: Let's go ahead and recess. That seems to be a good stopping point.

Ladies and Gentlemen, we will recess until 9:00 o'clock, in the morning.

Keep your seat in the audience until after the jury passes out.

(Thereupon; at 4:55 o'clock, p.m., an adjournment was [fol. 645] taken until the following day, Thursday, June 11, 1964, at 9:00 o'clock.)

[fol. 648]

Proceedings

EDWIN A. WALKER, having been previously sworn, testified further as follows:

Direct examination (Continued).

By Mr. Watts:

Q. Your name, please?

A. Edwin A. Walker.

Q. You were on the stand yesterday, weren't you?

A. Yes, I was.

Q. As I remember, we had just about reached the point where you had concluded your news conference and went on from Jackson to Oxford, Mississippi. How did you go?

A. I went in a car with a friend of mine, Louis Leman.

Q. Was he the only one who was with you?

A. Yes, sir.

Q. Did he drive?

A. Yes, sir.

Q. Where did you go?

A. Sir?

Q. Where did you go?

A. We left—we went to—drove up through the campus about, I would say somewhere along about midnight when [fol. 649] we first got into Oxford, and went on to the Mansell Tourist Court, which was about two miles west, or a little northwest of town, where we stayed.

Q. Did you check in?

A. Yes, sir.

Q. Did you check in there?

A. I didn't. Louis Leman checked in for me. I didn't get out of the car.

Q. General, do you have a little touch of artillery ears?

A. Quite a bit, right.

Q. Which is your best ear?

A. Left.

Q. All right. Who did you have register in?

A. Louis Leman got out of the car and went in and registered. I didn't go in.

Q. Did you understand that he was registering you under the name John Waters?

A. I didn't when he went in. When he came out he told me he had registered me under the name John Waters.

Q. What was the purpose of that?

A. Well, I know what his purpose was. I didn't say anything. I knew what his purpose was. He just has to answer all the telephones and just to keep him from being bothered by the press and calls coming in continuously.

[fol. 650] Q. What did you do the next day? First, did anything significant happen that night after you got in?

A. No, I don't remember anything significant. Nothing.

Q. Well, what happened the next day?

A. The next day we got up and went—it was Sunday morning, September 30th, and we drove down to the cafe to the right, further away from town. This cafe—this Mansell Tourist Court was way out about a mile and a half or two miles from town, out in a pretty lonely area.

Q. And did any newsmen show up that morning?

A. Yes, I remember—yes, three newsmen showed up at the door.

Q. At what door?

A. At the door of our apartment.

Q. About what time?

A. I don't remember the exact time. After we got—

Q. I don't ask for the exact time.

A. After we got back from breakfast, I will say.

Q. Relate what happened.

A. Louis went to the door and opened the door and they wanted to see me. I saw the discussion pro and con. He didn't seem to know whether to let them in or not, so I stuck my head out the door and told them I had nothing to say.

Q. Did you arrange to meet the newsmen later?

[fol. 651] A. Not at that time. At that time I had no idea of having a press conference. Later I did.

Q. Go ahead and tell us what happened. Did you go on to town after that?

A. We did some calling and—telephone calls. I was keeping my Dallas home notified about what was going on, and I had gotten word, I believe, the night before when we came in, probably made a call back to Dallas, and I had gotten word that someone had taken my car from my house in Dallas and gone off with it and nobody knew where it was, and they thought it had been stolen, and then in the morning we were discussing the car on the 'phone, and then there was a call, probably, to Jackson; talked to Ney Williams—some time during the morning. And during that time there were calls that went out of that tourist court, trying to catch Sheriff Ford and see when he would be in. And there was a call with regard to the location of Judge Moore, I believe. I was trying to find him. I had heard he was in Oxford up from Jackson. Judge Russell Moore, whom I had heard represented Gov. Barnett—Gov. Barnett.

Q. All right, sir. Where did you go then from the tourist court?

A. We went to—we went to Oxford and I can't remember the exact sequence, but at one time we were on the campus again, just driving through it in the daylight; we had driven [fol. 652] through it in the dark, just not stopping, didn't see anything but what you could see at night, on a very quiet campus, and everybody was away for the week-end,

and then I am bringing this up because I don't remember the exact time but I know we drove back through the campus just looking at it, a big beautiful campus. I had never seen it before.

Q. Did you go to the downtown area?

A. Yes, I went to Oxford and at that time—sometime during the morning stopped in and talked to Sheriff Ford.

Q. All right.

A. I believe—I believe I said before at one place that I stopped in that night when we came from Oxford, but I am not sure of the time. It seems to me it was this—I know, now, it was this morning.

Q. Do you remember just very generally what the visit was between yourself and Sheriff Ford?

Mr. Gooch: To which we object.

A. Yes.

The Court: Do not testify what Mr. Ford said. That would be hearsay.

[fol. 653] Mr. Watts: Do I understand he can say what he said before?

The Court: Yes.

By Mr. Watts:

Q. All right, sir, tell, relate to the jury, please, what you told Sheriff Ford.

A. I told Sheriff Ford that I had gotten in from Oxford and I let him know where I was staying and told him I was out at the Mansell Courts, and told him that I hadn't come up to Oxford for any violence, that I was very interested in what was going on, and to see for myself what was happening in Oxford and that I would be happy to assist him in any way I could, if he wanted, if there was anything he wanted, I would be happy to help, and that I would be at the Mansell Hotel.

Q. All right. Now then how long did that conference last?

A. Oh, I would say it last 15 or 20 minutes. He was interrupted a time or two by a telephone.

Q. And where did you go from there?

A. Now, this could have been the time we just drove back to the campus and around it and in, and it could have been before this.

But basically, there wasn't anything to do in particular except go have lunch.

Q. Well, it's relatively immaterial, but just carry this [fol. 654] sequence of events on from then.

A. We went to the Mansion House Cafe for lunch.

Q. Now, do you remember—to orient everybody's thinking, where was this cafe from the courthouse?

A. Well, the courthouse is—the whole City of Oxford, 5,236 people, something like that, is a typical—like many of our cities, where it's got a beautiful big old white, colonial courthouse in the center of the square and most of the town is just a block and a half, the key part of the city, the business area is just a block and a half off the courthouse square, with the four streets running center off of each end of the building on each corner of the ends, and off the center street.

And a block and a half, I believe it's the west side, is the, down the street, in the first block, about two-thirds of the way down, is the Mansell—is the Mansion House Cafe, Mansion Cafe. It's just a normal, just a cafe, that's all.

Q. Now, I don't believe you are oriented. As a matter of fact, the Mansion House Cafe is a block and a half due south of the courthouse, down Main Street, towards University Avenue.

Does that straighten your orientation out?

A. A block and a half due—

Q. Due south of the courthouse. Now do you recollect [fol. 655] now the relative location of these areas?

Then you go from the courthouse to the Mansion House Cafe on the west side of the street, then on down to University Boulevard, where you would turn right and go to the campus.

Now am I straightened out on my directions?

A. I thought it was in the first block but you probably know.

Q. All right, sir. Now then that is where you ate lunch, is that right?

A. Yes.

Q. All right. Where did you go after lunch?

A. We went on back to the Mansion House—Mansell Court, Mansell Courts, motel.

Q. And then where did you go in the afternoon?

A. We went to a press conference.

Q. Where?

A. At the Ole Miss Motel, about a block and a half from the courthouse.

Q. Would you describe that press conference please, sir, to the jury.

A. How it was set up?

Q. Well, just give them a running account. They weren't there and you were. Just tell them what you saw and what happened.

[fol. 656] A. Well, the press conference was set up at the cafe by continuous requirements of the press all the time I was eating, at the cafe when we were eating lunch.

Q. All right, go ahead.

A. And I said if I held a press conference—I told them I wouldn't—many of them that came by, practically couldn't eat my lunch for people coming up and wanting a press conference and asking me question, and I wouldn't answer their questions.

And finally said, after I had been bothered about six times in the middle of the meal—which was all right, I finally realized that he—that it was a little bit . . . trying to be antagonistic with their questions and being on top of me continuously, and I finally said, "All right, if I hold a press conference, I know where you all are. You are at the Ole Miss." I had heard that.

"The Ole Miss Motel and if I have a press conference, I'll join you down there and let you know by calling in,

I'll call in and let you know at that place and let you know."

I think I said 2:00 o'clock, "I'll let you know," for a 4:30—4:00 or 4:30 press conference.

Some of them came on back and said, "I can't make that because my press has got to go to press sooner than that. I want some answers right now."

[fol. 657] And so it was sort of argumentative and I, sometimes as a fairness to the press, you tell one you are not going to talk and then you try—then the other one asks you to talk to them, it's not quite fair, if you said you are going to meet them, you ought to give everybody the same, equal break.

And so I got a little bit ugly about it. I said, "You heard—" I said, "I can't help what time everybody goes to press, print at a different time. You've got to wait, that's all."

And so this was set up for 4:30 at the Ole Miss.

Q. Motel?

A. Motel, in town, sir. And we were a little bit late getting there.

Q. Of this group that came by your table, were any of them Associated Press personnel or did you know?

A. I don't know. They were in-state and out-of-state, of Mississippi. I couldn't identify them.

Q. Yes, or no, did any of them identify themselves as AP personnel?

A. As far as I know, they didn't identify themselves as any particular one.

Q. The answer is "no"?

A. No.

Q. All right. And what happened then, after you had [fol. 658] this—after you had gone to lunch, did you go back to your motel?

A. We had been back to the motel. Now we are at a press conference.

Q. All right, go ahead and tell about the press conference.

A. After lunch, I had been back to the motel. We had finalized and made the call that we would have the press conference.

And then we went back to the, went to the press conference I have been discussing.

And we were about 30 minutes late getting to the press conference.

Q. All right.

A. Due to telephone calls, or something, that had delayed us. When we got there, one of the reporters said—I just walked out in the center of the court and it looked like they were going to hold the press conference right outside in the center of the court and it was no particular set-up or any arrangement or anything. There were just six or eight of them standing around.

And one of them said, "Your press conference has sort of been scooped."

And I said, "What do you mean?"

And he said, "Well, they have gotten word that the [fol. 659] Marshals are on the campus."

And so there were questions. We went on with what few were there, three or four or five.

And four or five people standing around, watching. And I made a statement and some questions were asked and that seemed to be enough and I would say—

Q. Let me ask you a question here.

Was that statement you made a written statement?

A. I had written out a statement before I got there and I used that statement as a lead-in, which I usually do.

Q. Do you have copies of the statements that you issued there and elsewhere?

A. I don't have them right here. I think they are in the files and records.

Q. Now you have, or have you not previously given to Mr. Gooch or to Mr. Cravens, his partner, during the course of taking your depositions these written statements?

A. Yes, sir, we have.

Q. And they are of record in court in your depositions?

A. Yes, the ones they have got have been handed to them from us.

Q. And was it one of those written statements that you read at this press conference?

A. Yes, it is.

Q. And then do I understand it, you were asked several [fol. 660] questions after that was over?

A. That's correct, yes.

Q. Now where did you go then after your press conference was over?

A. We went to the courthouse—no, we drove by the courthouse and drove back out to the campus and there was a policeman standing way down at the bridge and the railroad and he wasn't ever letting—he wasn't letting any cars come through.

And he stopped us and he said, "You can't go in."

And so we turned around and we on back to Oxford.

Q. And what happened then? Did you go to the courthouse?

A. We went to the courthouse.

Q. All right. What happened at the courthouse?

A. Well, I had talked to Sheriff Ford earlier in the afternoon and then we'd talked to him again sometime from the Mansell Motor Court and at the courthouse, went in the courthouse and there were, say, 15 or 20 people standing around downstairs and most, six or eight of them must have been Sheriffs. And I met them all.

Somebody introduced me around to the Sheriffs. I think it was Sheriff Ford. And there were people on telephones back in the corner.

And I asked—we talked to several of the Sheriffs and [fol. 661] they were trying to get a call through to Jackson at the time. They were—they wanted—

Mr. Gooch: I object to what the Sheriffs may have said.

Mr. Watts: No, don't—

The Court: Sustained.

By Mr. Watts:

Q. Just tell what happened and what you said and who you saw. Did you see any people—any representative there of the Governor?

A. Yes, after 10 or 15 minutes—

Mr. Gooch: We object. It would be a conclusion on the part of this witness.

Mr. Watts: It's common knowledge—

The Court: If he knows, I will permit him to testify.

By Mr. Watts:

Q. If you know, did you or did you not, yes or no, see a representative of the Governor there at the courthouse?

A. Yes, I did.

Q. All right.

Mr. Gooch: To which we object on the grounds that's a conclusion on the part of this witness.

The Court: Overruled.

Mr. Gooch: Exception.

By Mr. Watts:

Q. And after this conference at the courthouse, did you [fol. 662] go then back to the Mansell Court or did you go eat your dinner?

A. In the deposition, I believe I said I went back to— I went to eat dinner.

But actually we didn't. We went on back to the Mansell Court.

I had forgotten we went back there again.

Q. Well, that's all right, those immaterial things I am not concerned with.

You did go to the Mansion House Cafe then, which was about a block and a half south of the courthouse and ate?

A. Yes, went there for supper.

Q. All right. Relate to the jury what happened while you were in the Mansell—while you were in the Mansion House Cafe eating?

A. We got in the Mansion House Cafe, which is just a street cafe along the side of the street as we have identified. And I went in at about five or ten minutes to 8:00 on September the 30th, and sat down at a table and ordered our meal.

And somebody walked in the front door with a radio and it was announcing that Kennedy's, Mr.—the President's speech was coming on.

And the radio was sitting up near the front and he sat [fol. 663] it on a heater or something up there and we were sitting back about four or five tables back and I couldn't hear it. And when it started, I walked up there and there was two or three people standing there. It was up by the counter, check-out counter, at the door.

And I stood around and listened to President Kennedy's speech from the time it started until just about the last of it before—

In the meantime, why, it looked like our meal was coming and I went back and sat down and started eating dinner.

Q. All right, go ahead from there.

A. The speech was completed and, with Louis Leman, he was with me, the only one.

There were other people in the—

Q. Excuse me right there, General. At this point, don't worry too much about those details. We don't care about the other people.

Just hit the highlights and tell us what happened after that.

A. We were—we ate dinner, got up to pay the bill, were delayed at the counter talking to some people that came in, delayed by my request for a carton of cigarettes.

About that time somebody stepped up—we had finished dinner—somebody stepped up and said, "While—while I

was standing at the counter, "There is trouble going on, [fol 664] on the campus," and I said, "Oh, is there?"

And he tried to get me into a conference and I wouldn't—

And I finished my business with paying the bill and getting cigarettes and went on out the door and got in the car with Louis.

And I said, "After we got in the car, I said, "That feller said there is some trouble. I don't know who he is. At the campus. Let's drive on out there."

Q. And did you?

A. Yes, we did.

Q. Where did you go?

A. We drove out Oxford (sic) and I guess a mile, mile and a half to the campus, whichever direction it is, you go out University Avenue.

He was driving. I didn't pay much attention to directions and the road, but it goes on out in a mile and a half of the campus and you got back to that same bridge and the policeman was stopping people there.

Q. Now, as you left the Mansion House Cafe, going south, you turned west onto University Boulevard. I wish you would pick up that ruler right there in front of you and go to the plat and show the jury approximately where you parked and where this roadblock or policeman was.

Do you see the pointer there on the desk?

[fol. 665] A. (Indicating) University Avenue coming out of Oxford would come right down this route and gotten to the railroad tracks, which there is a bridge over the railroad tracks, which is right there.

It's a big, wide street and right here there was a policeman standing in the center of the street, waving, stopping cars, not in contact with them but, with the cars, but you could see him up here.

So you stopped right in here and we turned right in here. I got out of the car right here, as we decided to park after the police stopped everybody.

There were also cars parked up here that had been parked up here evidently beforehand. You could see them.

in the street, maybe three or four, on up this way—no, it's on up this way, further.

But we turned right here short of the railroad track and I got out of the car, walked across the bridge. You could hardly tell this is a bridge, it's so smooth over the street.

This is a big, deep gully and tracks down in here. Parked right here.

Louis, after the car turned, I got out and he parked the car in this area and I walked on across the bridge.

Q. Did you walk in the street or where?

[fol. 666] A. No, I walked right on the sidewalk, right here. There was a sidewalk going across.

Q. Would you trace the course then that you took from the railroad overpass onto the campus?

You can step out a little further, it's all right. Move the chart there so you can—kind of a tight fit for a big man.

Mr. Watts: Excuse me, if Your Honor please, may I back the chart up just a little, kind of tight fit for him?

[fol. 667] A. The question was where I went from there? I walked right on up the street here on the sidewalk, always on the sidewalk, and I went right on up the sidewalk to the campus, here to this area. A big lamp post here, and I stopped right in this area (indicating chart).

Q. All right. Tell the Jury just what occurred in that area?

A. When I got here there must have been, oh, anywhere from seventy to one hundred students around this whole area, say within one hundred yards, or seventy-five of this lamp post, and down in the street here. You are coming uphill, sort of, here, and this is the main light that is on the whole campus, actually, this evening.

It's the big overhanging street light, sort of hangs over and hangs over a third of the street here, and it is right on this corner.

And the campus, it is a dark night, it is very dark. They—I got up here and talked to students that were hanging around in this area. Nobody—there wasn't any mass welcome, or any mass knowledge that I was there and a lot of them don't even recognize me; a lot of them don't know who I am.

Pretty soon I would walk—I would walk into a group, or they would walk up to me and say, "You are Walker," and then you would hear them tell somebody else, but—
[fol. 668] Q. How were you dressed?

A. I was dressed just about like I am now, with the hat on.

Q. Big white hat?

A. White hat, normal—

Q. Texas hat?

A. Texas hat.

Q. Okay, go ahead.

A. I stood around in this area talking to the students for ten or fifteen minutes. I even got, at this time, talking to students—the light extended, as you say, the light would show you people about in this area at the time. There was just this one light, and the basic other light through the evening that was even near, was way up here, a very small light (indicating).

Q. By "up here," you are pointing to what installation?

A. Well, it was—it was right along here. I am talking about the Lyceum Building. That was the Lyceum Building, or Administration Building. You could see one tiny little light, like a candle light, practically, from this distance. At night it looked a long way up there, longer—it looked a long way up there, and it appeared to be. Because distances at night look long and you—you can't see that distance. You [fol. 669] couldn't even see—you could vaguely, if you thought you knew what the outline of this building was, you might have—you might try to make it out. I couldn't even—couldn't have even drawn the outline of the building from any area in here. But, this is dark, it is overly dark in this area, because these are tremendous trees, great big pine

trees and they go up thirty or forty feet and they are all overlooked in the top. So, there is no seeing the sky or anything. You are under trees, it is very, very dark. So, you don't see the tops of buildings. You might see the tops of a skyline of a building in a light sky if you didn't have the trees, but you can't stand in here and see even the second story of this building.

Q. All right. Go ahead.

A. And that is true of this building (indicating). That night I couldn't see that building. I didn't even know this building was on the campus until the next day.

This is a dark area. You can—as people walk past the light maybe up in the distance you can catch his image or watch him go by.

Q. Now, then, excuse me just a minute. I think you have covered that adequately. As you arrived there, where you have your pointed, had you walked along the sidewalk or along the street?

A. I have walked all the way along the sidewalk, never [fol. 670] getting off the sidewalk.

Q. Where the Circle starts does the sidewalk on which you were walking enter into the street? Approximately in the area of the street line.

A. It either ends right here, it goes at least this far, or it turns to the left a little, I am not sure.

Q. At that point what did you do?

A. Well, for fifteen or twenty minutes I was discussing—asking questions about what was going on and saying “hello” to people that wanted to meet me and wanted to talk to me, and a lot of the people indicated they were interested in me for an autograph, or something like that.

Q. All right.

A. And I asked them about the situation, what was going on. I—

Q. Now, at that point, did this group have any leadership that you could identify?

A. No, there wasn't any leadership. They were just—they looked more like bystanders, enthusiastic and inter-

ested and, certainly interested in the activities there that night, but as far as leadership, they were just students moving around talking to each other in twos and threes.

Q. Speaking of activity, what was the activity on further to the West, up towards the Lyceum building?

[fol. 671] A. Well, when you got to this point (indicating) you began to smell tear gas. I no sooner got here than I recognized tear gas.

Q. Had you smelled tear gas before?

A. Oh, yes, plenty of time.

Q. Go ahead.

A. And, talking to people in this area, it began to make you weep, and you recognized that it was tear gas. Then within five or ten minutes you saw tear gas being fired from this direction out into here (indicating).

Q. Could you hear any reports?

A. Oh, yes, you can hear them go off. You can hear them two or three blocks, at least, at night. Maybe if it is a very still, quiet night, you might even hear them half a mile.

Q. How did the report of these weapons compare with the report of a GI Army rifle?

A. Well, a Army rifle is sharper, got more of a crack. I just—

Q. All right, sir. Go ahead.

A. Now, the students in the area, after you get up here, you see a few more. Nobody is standing for any particular time or reason, or just moving around talking to each other.

Q. Now stop just a minute. You made a statement, "As [fol. 672] you get up here." Did you ever get up "here"?

A. No, I never got near this building. But I am trying to describe the—from what I can hear and tell, there were students going in and out of the YMCA.

Q. Now, excuse me.

A. Which I couldn't see and never got near.

Q. When you said, "As you get up here," do you mean you went up there?

A. No, I didn't mean I got up here, but as you get up here—I was describing the situation as I can, the situation around the campus there as I know it.

Q. Put the pointer back to where you were.

A. I was back in this area here (indicating).

Q. Did you see the individual who was here in Court a couple of days ago, this Sheriff Witt, the heavy-set Sheriff?

A. Yes, I saw Sheriff Witt. I met him right in here (indicating).

Q. Near the monument?

A. Right. That was within fifteen or twenty steps of the monument.

Q. All right. Tell us about that meeting.

A. Either I had said "hello" to him or he said "hello" to me, and I shook hands with him, and asked him, probably, what was going on, and we discussed what was going on on [fol. 673] the campus.

Q. Did you ask him in seriousness or in jest or in any other manner about deputizing you?

Mr. Gooch: If the Court please, the form is objected to.

Mr. Watts: I will withdraw it. What I want to cover here is what, if anything, was said about his deputizing you, if anything, or do you remember?

A. Well, there was a statement in jest, "Well, why don't you deputize me, Sheriff?" And, of course, I suspected he couldn't do it. I never heard of deputizing anybody out under a tree.

Q. All right, go ahead. Did the Sheriff then—did you have any association with him, or any contact with him from then on?

A. I probably talked to him a few minutes at different times. I saw him two or three times, either as I went past him or as he walked past me, or something.

Q. Did you consider him as one of your associates at that point, or—

A. Well, I considered him as one on the campus that would keep the students from getting hurt, and being in any violence.

Q. Go ahead and tell us what you saw, and what happened.

[fol. 674] A. The students—there was, as I came in that area, the students finally, as the word went around, in five or ten minutes, within this location, this local group I am talking about that you could see, the word went out, "Walker is on the campus," and I did hear a remark, "We have got a leader now."

The prevalent question, the ones that would come up and stand around and talk was wanting to know if I would speak to them, and I told them, "No," I had nothing to say to them, and would continue to reverse the conversation to ask them about what had happened, and what was going on, and got the word that it had started at 8:00 o'clock when the tear gas was fired directly at the backs of the Marshals and into the students in mass, and I was trying to put the picture together, what had happened.

Students were saying that they were being shot at, and I was immediately told, or within five or ten minutes of being in this area, that two people had been killed. And they referred to a girl, a student that had been hit with a missile of some type and had been killed and carried off, and they referred to the killing of a Highway Patrol that had been taken off on a stretcher.

Q. Did you later learn some of those reports were inaccurate?

A. Yes, sir, I later learned that they were not so.

[fol. 675] Q. All right. Go ahead. From that point where did you go and what did you do?

A. There was other questions from the students, "Well, will the Government use Military force?" I sort of avoided it. It was obvious that the students were using Cuba, "Why not be in Cuba?" And, "Why take Military forces on the campus?" And the question was, "Will they?" And my answer, I didn't know whether they would or wouldn't.

It seemed pretty obvious to me, but I wasn't saying anything because nobody knew what was going to happen.

It was obvious that the Marshals were already on the campus, and had been on, evidently, since about 4:00 or

4:30, according to what the students told me, and they wanted to know if I would speak to them.

Q. Oh, yes, incidentally, in that direction, did they ask some of you—did some of them ask you to lead a charge?

A. Not—that wasn't the prevalent question right then. They—

Q. Well, was you asked?

A. They were asking me if I would lead them, and would we get organized. It was obvious for a charge. "Are you going to be our leader?" And, "Will you lead us?" And—
[fol. 676] Q. What was your answer to that question?

A. I ignored that question, and said, "No, you are not supposed to, you are not going to close with the Marshals, you are not going—there is not going to be any violence. You are not—it won't do you any good to approach the Marshals.

Q. All right. Go ahead. Where did you go from there, from the vicinity of the statue?

A. Just in this area right around here (indicating).

Q. Do you know where the flagpole is?

A. At that time I didn't know where the flagpole was. You couldn't see it. Later in the evening I found out where the flagpole was.

Q. You now know—you now know where the flagpole is, don't you?

A. Yes, sir, I do.

Q. How far toward the flagpole did you go in that period of time from the monument area?

A. Not past about this area (indicating). But most of the whole time was spent right around in here, because this is where the students were, in small groups, and this was permeated with tear gas, and tear gas was rolling out to about this line (indicating chart).

Q. For the sake of the record, where you said, "Not past this area," did you point to an area approximately half [fol. 677] way between the monument and the flagpole?

A. Half way between the monument and the flagpole, or a little bit over half way.

Q. All right. And did you in this period of time walk westward at least to that point? Yes or no?

A. During this period, yes.

Q. What was your gait?

A. Walking slowly.

Q. Was it—all right.

A. And with no particular course because people would be coming by, or I would stop to talk.

Q. And what did you do when you got to the furthestest point westward?

A. I tried to see what was going on up in this area. You could see from back here, but it was so dark you had to go a little forward to see a little more, and I could see the tear gas coming in this area. And I could see people up in this area, students in groups of one, two or three, moving around. I would say there were thirty or forty that you could see at any one particular time. They were all doing something different. And wandering around, and one might throw something. I could see the motion of throwing.

Q. And—

A. And then there would be fire gas fired—tear gas [fol. 678] fired back in that area.

Q. Then how long did you stay at that particular point between the monument and the flagpole?

A. Between the monument and the flagpole? I was in this—I couldn't identify—

Q. I don't believe you heard the question, General.

A. About ten or fifteen minutes before—

Q. Before you turned around and went back?

A. Right.

Q. And tell us what happened as you started back, and after you started back?

A. Well, I was up here, to answer your question, about three to five minutes.

Q. All right. Thank you. Then, what happened after you left and started back?

A. I went on back and went to talking to people. And by this time there was a movement, I could hear automobiles coming over in this way. (indicating).

Q. Did you ever become acquainted that evening with a preacher, Rev. Duncan Gray?

A. Oh, yes, I did.

Q. Did you know who he was at the time?

A. No, I had never seen him before, and didn't, no.

[fol. 679] Q. Did you see a preacher along about this time, or somebody you could identify as a preacher?

A. Yes, sir, right in here (indicating). He was wearing a black coat and a high collar.

Q. Did he approach you or did you approach him?

A. He approached me.

Q. And tell the Jury—you may take your seat now.

Tell the Jury as nearly as you can remember what the conversation was between this preacher and yourself, and tell what his actions and demeanor was.

A. Rev. Duncan Gray, later identified as Rev. Duncan Gray—I didn't know who he was. And he approached me in sort of an argumentative mood make demands that I do this and I do that and—

Q. That you do what? What did he ask you to do?

A. Well, during the—I don't remember, but it was perfectly obvious that he was very excited, and that he was very argumentative, and his approach was not quiet in any way, and I just turned and walked off.

Q. Well, what did he ask you to do?

A. Well, then, the next time I stopped he came up to me again, and this time he grabbed a hold of my sleeve and pulled on it, or my arm, and was argumentative again and either I walked off or moved over, or turned my back [fol. 680] and he moved around on the other side of me, and started in an excited mood, and sort of frenzied, demanding that I stop the students. And, "You can stop them," and, "You certainly cannot let them do this." And, "This is terrible."

Q. All right, sir. Go ahead and tell us what you told him, as nearly as you can remember?

A. I asked him whether, if he belonged on the campus, if he was attached to the campus, or had duties on the campus. It was my understanding that he said he did.

Q. All right. And what did you say?

A. I said, "Well, why don't you stop them?"

And he kept right on. It was just sort of in a manner that was not where you could converse with him quietly. And—

Q. What else did he say to you, or what else did you say to him, that you can remember?

A. I probably said—I did say, "Well, what denomination are you?" And he said, "I am a peace Episcopalian." And I said, "You make me ashamed to be an Episcopalian."

Q. And then what happened? Roughly in what area were you when this occurred, with respect to the monument?

A. About twenty steps west of the monument, there in the Circle.

Q. You started to tell us something about automobiles [fol. 681] and probably I interrupted you. You started to tell us something about automobiles. Will you go ahead and relate that incident to the Jury?

A. Automobiles started out, as you face the Lyceum, on this left road coming out. I think I pointed to it.

Q. Yes, you identified that.

A. I could hear them coming and I had no idea what they would be, what the automobiles would be coming out from the Lyceum area, and I asked a student or somebody standing around the area what was that. There was always people walking back and forth, west back to the east, and I said, "What is that, what is that?" And one of them said, "That is the Highway Patrol leaving."

Well, that didn't seem to make any sense in what was going on, so I stepped over to the curb and looked right down in the cars to identify them myself, and I was about twenty steps down the road from the monument. I stepped

right out on the curb and looked right down in the car to see if they were leaving.

Q. General, up to that time had you participated in any way in any activity of the crowd that was throwing things at the Marshals?

A. I hadn't participated in any way, none at all.

Q. Did you assume any command over this crowd?

Mr. Gooch: I object to that as a conclusion on the part [fol. 682] of the witness, if Your Honor please. He can tell what he did.

By Mr. Watts:

Q. Well, let's—

The Court: Mr. Gooch, I am going to permit this witness to answer that.

By Mr. Watts:

Q. Did you assume command of that crowd?

A. I certainly did not.

Q. Do you know what I am talking about when I say, "assume command"?

A. I certainly know what it means to assume command.

Q. And did you at any time prior to seeing these Highway Patrolmen leave position yourself in the vicinity of anyone that you knew had a rock or a missile?

A. None that I saw. I didn't position myself near anybody that had any rocks or any missiles.

Q. At this period of time what was the very closest point you were to anyone who you could identify as throwing something at the United States Marshals?

A. At least half way across that whole Circle, which would be over a hundred and fifty yards.

Q. Were you, or were you not, as you approached and arrived at that monument taken ahold of by men on each side, and taken by the elbows?

A. I certainly was not. At no time was anybody taken [fol. 683] ahold of me and I am sure there wasn't—there wasn't any reason to take ahold of me. I wasn't going anywhere.

[fol. 684] Q. When you arrived at the monument, was or was not a leader of the mob waving a big Confederate flag? (Indicating) Yes or no?

A. No, there was not.

Q. All right, sir. Now then as you returned from this position between the monument and the flagpole and saw the highway patrolmen in the cars, as you have outlined, did you hear any comments from the crowd concerning the highway patrolmen or the situation as it then existed?

A. Yes, I did. The word began to pass around through the students that, "Barnett has sold us out."

And there was a build-up of enth—of excitement over a rumor that Barnett was selling them out and that—just seemed to be more excitement over it and more—

Q. Up to that time, had you been requested to speak on the monument?

A. Yes, I had.

Q. Or anywhere in that area?

A. I had been continuously requested to speak.

Q. And up to that time, had you spoken?

A. No, I had not. I said definitely that I had nothing to say.

Q. After you heard this word going through the crowd that Barnett had sold them out, did you do anything?

A. Yes, finally another group said, came back by me [fol. 685] and said, "Well, General, please talk to us."

It wasn't all in the words, "Making a speech." They, a lot of them said, "Won't you talk to us? Won't you say something?"

Well, the group came back and another came by and said, "Please, talk to us."

And I said, "All right, I'll—I'll talk to you."

Q. Up to that time and including that time, were you and any group around you met with a heavy barrage of tear gas about 75 yards from the Lyceum steps?

Yes or no.

A. Certainly not, no.

Q. Now then after you had decided to talk to these people, tell the Court and jury what you did and what you said.

A. They said, "Come on," this group, "And stand up here."

Well, sort of spontaneously there had been a group of students, about 150 had moved around on the east side of the monument, were in that general area.

And as I moved around with one or two or three, somebody said, "Stand up here on the monument."

And the students began to gather around, sort of a spontaneous group of about not over 150 students, standing in the south—on the east side of the monument, in the [fol. 686] street.

I got up on the edge of the monument. It was only about—stepped up on the edge, which was about a foot or foot and a half high. I could just see over the crowd well, the group there, which was about 150 and sort of fringed out into other people standing other places and even way out of hearing distance.

Q. And did the monument have a base on it?

A. Well, that's what I have described, this base which was, you could stand up on, put you up about, I would guess, 15 or 18 inches higher than the street.

Q. Now I wish you would tell this jury—and I know it's been difficult to remember under those circumstances exactly what you said—tell them as nearly as you can remember or in substance what you said to this group of people.

A. I told them that this was not the place for violence, that nobody came to Mississippi—I definitely told them in these words, "That nobody came to Mississippi for violence, that no violence was intended."

And there was a boo and a mass boo when that statement was made, and yells, "He's not going to do anything. What's he here for?"

And it was just a mass psychological opposition through the crowd.

[fol. 687] And even some of them turned and started on off. And each time you would wait to watch and let it calm down again.

I said, "If there is any blood shed at Mississippi, at Oxford," or Mississippi, "it will be on the hands of the Federal Government."

I told them that truth and the seriousness, tragedy of this situation was in a sign that was on their own airport, which said, "Cuba, that way (indicating)."

I had decided only to talk because of this rising crescendo that Barnett had sold them out, which was getting them excited.

And I had just been to the Sheriff's office and the courthouse.

And so I wanted to tell them that, to quiet them down, that this wasn't true, that Barnett had not sold them out.

I remember very distinctly, I had thought of Birdsong's name and I couldn't think of anything but Birdwell and that seemed the natural thing, and I knew that was wrong, so I turned down and Louis Leman, who had been with me at the courthouse, was standing on my right, and as I wanted to tell them about, that Barnett had not sold them out, that a representative of the Governor, whose name I would not mention to the students—it was Judge Russell [fol. 688] Moore who had come up to the courthouse to talk to the Sheriffs, which I had lis—sat in on when I was at the courthouse.

And I didn't, wouldn't refer to his name. I only said, and I made it very clear twice, "That this is a representative of your Governor saying this. I am not saying this but I am telling you what I just heard at the courthouse this afternoon. And the representative of your Governor

was there and he said that his orders and his desires had not been carried out that afternoon with regard to what had hap—what had transpired on the campus, “That the head of the highway patrol had escorted, with others, of course, which the students knew, but the highway patrol had, head of the highway patrol had escorted Meredith on the campus.

And I couldn’t think of the—the students said, “Who?” And I didn’t think it made any difference to tell them. And I couldn’t think—I thought of Birdwell and I knew that was wrong and I turned down to Louis Leman and I said, “What was the fellow’s name,” sort of under my breath, and he said, “Birdsong,” and I said—I said, “The man, the Gov—the representative . . . was referring to Birdsong. He said that Birdsong had not carried out the decisions and the desires of the Governor.”

Q. Now General, at this point, and quoting from the [fol. 689] news report of the Associated Press, the language of the reporter, Van H. Savell, I will ask you specifically, did you or did you not make these statements to these people at that time:

“I heard Walker say that,” and here are the statements, “Governor Barnett had betrayed the people of Mississippi.”

Did you or did you not say that?

A. I did not say that.

Q. “But don’t let up now. You may lose this battle but you will have been heard.”

Did you say that?

A. I did not say that.

Q. Did you say, “This is a dangerous situation. You must be prepared for possible death. If you are not, go home now.”

Is that your language?

A. It certainly is not. I did not say that.

Q. About how long did this speech last?

A. About five, seven minutes. Five to seven.

Q. What—oh, incidentally, did you, either during the course of the speech or at the end of it, again see the Reverend Duncan Gray?

A. Yes, this delayed it a little, you might say, during the early part of the speech.

[fol. 690] I can't just remember where but somebody started clambering up on the monument and grabbing hold of my leg, as I remember.

And the Reverend is a very tiny, little feller, very, very small. And he was sort of clawing his way up. And the students were booing him and I stopped and I didn't know what was going on and I looked down and made some remark, "I believe your Reverend wants to speak."

I may have even said, "He has a right to speak, too, if he wants to speak. But I am talking now."

Q. And did you then repeat the statement that his action, or something about a Presbyterian—strike the Presbyterian—Episcopalian—

A. I didn't remember this. It's come up in testimony. I may have said it again at the time. I remembered saying it once before when he met me out there. I may have said it.

But it was very obvious that the students were pretty mad about the situation and any word I might have said that was wrong, somebody was going to hurt him because there was a student crossed in front of me, ready to take him on, and quick. And it was—Mr. Gray was in a little rough situation and I was—

Q. What happened then at that point?

A. Well, the Sheriff, or somebody—and I recognized [fol. 691] a Sheriff or looked like a law enforcement agency, reached up there with, or somebody else reached up and put him on the first ledge and somebody else took him from there and led him off.

Q. Have you since learned that it was this Sheriff Talmadge Witt that did that?

A. I have since learned that it was Sheriff Talmadge Witt.

Q. All right. Then tell the jury now, in your own words, and you may take your pointer and step back to the chart, tell the jury just exactly what you did, what you saw, what you said and what you heard from the time you made that speech on, for the next, we'll say, 30 or 40 minutes.

A. Well, the students had begun to boo and protest and I held their attention, got them back a little bit, trying to give them the word on Barnett.

But some of them had moved out, and the rumor was going around in the fringes, "He's not going to do anything."

But basically, I kept the group there with the statement—oh, I had said during the speech that, "You can protest," that, "You have a right to protest, but this is not the place for violence."

The—

[fol. 692] Q. Go on over to the circle there, put your-specs on so you can see.

A. Well, I do need—no wonder, I have been having trouble.

I am standing right on the edge of the monument, facing this way. This group was right in here. I stepped off the monument, I don't remember which, one of the—I have heard this way or this way (indicating).

But I walked right out in here. And the people, after a talk, want to talk to you.

So there immediately were students around me here and I stood here and definitely turned my face so I could see, look this direction, and watch this group of students.

So the boy, whoever he was, the boys that were talking to me, talking about what was going on, and Cuba, and so forth, I turned and stood right in this area and watched this crowd disperse.

Now the most of it, as the ones that had left, gone these directions, but the most of this crowd, group of 100 to 150, moved on down this direction (indicating).

Now they would go this way and come on back out here and I watched the students come on back through here and go back to what they had been doing up in this area.

I saw one or two groups go through here—a group, say, was four or five, six.

[fol. 693] Some of the group, you could obviously tell by them passing that they were just walking and talking and that they were headed on back up in this area.

Of course, some of them were back up here as they had been before, before I went on the monument, up here throwing rocks and getting tear gas continuously thrown out in this area.

There was hardly a time within 10 or 15 minutes that there wasn't a blast of tear gas, say five dispersed tear gas, that would come in about this area.

So I stood right in here and talked and watched the whole crowd disperse. I wanted to see it disperse. It did.

Some of them mozied along down here, some of them stopped and stood here.

Students went on back up here and went to rock throwing again. Others went out in this area and worked in this way to rock throwing.

I was talking to people in here and finally, after I—when I saw this whole thing had dispersed, go on back to what they were doing, moving off in every area and then there was just, oh, back again, the way it looked, when I came on, 50 or 60 standing around in different places in this whole—I turned around, talked to these boys a few minutes.

As one testified, we talked there 10 or 15 minutes and [fol. 694] about Cuba and the inter—the general situation in the world and what was going on and there were—I turned and walked from person to person or in generally up, on up to this area again (indicating).

Q. What was your gait as you walked?

A. Just slow walking, watching and looking and trying to see all the time.

[fol. 695]. Q. All right, take your seat again.

A. This is taking at least fifteen or twenty minutes.

Q. On that walk did you get as far as the flagpole, or where, with respect to the flagpole? Just tell the Jury.

A. I got up within ten or fifteen steps of the flagpole and stopped and looked again, watched to see what I could see.

Q. Then did you go on past the flagpole?

A. Not at that time. I stood around there for a few minutes and moved a little bit to the left or to the right, and then the next ten or fifteen minutes, why, I moved up a little bit more to see if I couldn't see more clearly.

All the time you are trying to see. I am trying to see the Lyceum Building. I haven't seen it yet. I mean up to this time in my conversation.

Q. All right. Go ahead.

A. So, in the next—we have already covered, say, fifteen or twenty minutes after the speech. Now, this is going on for five hours, all evening. It didn't all happen as the radio runs it off, like when they speed up these radios and TV's so that everybody is dialing every direction at once. This is spread out over much time.

[fol. 696] Q. Did you finally then get up in the immediate vicinity of the flagpole?

A. I am up to about ten steps short of the flagpole.

Q. Ten steps is thirty yards. Not thirty feet, thirty yards.

A. Okay, then, I move up to fifteen or twenty feet from the flagpole. I am still trying to see something, you are still trying to see, you are looking right, you are looking left. You still can't see those buildings. The limbs of the trees, now, are about the height of your ceiling here, at the edge of the ceiling.

Q. Now, were there people in the area while this was going on?

A. Yeah, all over the area. No big group. No big racket. You would hear a holler and look over that way, or you would hear a student say something or you would hear a burst of tear gas, then you—or you would hear a racket, say like somebody was beating up some tin, or—basically it turned out to be automobiles.

Q. Did you lead anybody at that time?

A. No, I certainly did not.

Q. Did anybody in your immediate vicinity at that time throw any rocks, sticks, stones or missiles in the direction of the Marshals?

A. Nobody around me at all. There were—I was—there [fol. 697] was boys off forty or fifty steps. I could see people that were moving back and forth from the Marshals, or like they were trying to get up close to them.

Q. Did you at that time participate in any of such activities?

A. I did not.

Q. Did anybody at that time, or at any time after you made the speech on the monument come up and grab you by the arm and you march in front of a large number of people toward the Marshals?

A. I certainly did not. That never occurred.

Q. At any time while you were there that night did you see anything that approximated 1,000 people in one place at one time doing the same thing?

A. Never from the time I got on that campus until the time I left did I see anybody approximating 1,000 people, that I could even see at one time or that were together at one time. Nor was there even 500 together at any one time. Nor was there even 100 massed up together to do anything. No. There wasn't even twenty massed up to do anything. They were just scattered out in groups of fours and fives and you could see that they didn't even know what each other was doing. Not a single one had any connection with what another was doing.

When they talk about thousands on the campus, people [fol. 698] are talking about dormitories and where they have been fifteen minutes before.

Q. Wait just a minute. I am not talking about what people are talking about. What I want to do is get what you saw and what you did.

Now, after you were there in the vicinity of the flagpole this first time, after the speech, what did you do? Did you stay there the rest of the night or did you leave?

A. I didn't leave until about 1:00. Between 1:00 and 1:30, 1:00 to 1:30 or 2:00, or something. About 1:30.

Q. And did you stay all that period of time in the vicinity of the flagpole?

A. No, the whole—that is eight; nine—9:00 o'clock until 1:30; you have got about three or four and a half hours. You get tired and boring. I was staying most all of that period between, back in the area over here by the monument and to the left of the road.

Q. And how long at that time, after the speech, did you stay in the area of the flagpole? Ten or fifteen minutes, thirty or how long?

A. Well, what is the vicinity of the flagpole?

Q. I would say within fifty feet of the flagpole.

A. Oh, about ten—five to ten minutes. Ten minutes, say. [fol. 699] Q. Where did you go from there?

A. Back toward the monument, and toward the left.

Q. Did you again that evening go westward toward the flagpole and the Lyceum Building.

A. Yes, I walked up just a little to the left of the flagpole maybe an hour later and stood around in that area listening to some racket up on the left, which I couldn't see, and tear gas was being fired and it rolled out by me.

Q. Were you west of the flagpole at that time?

A. At one time I was about ten steps west of the flagpole, just watching and looking and trying to hear a bulldozer, once, and another time when a car was being beaten up. I couldn't see either one.

Q. All right. From the time you left the flagpole area and went back to the monument area what did you do in the area of the monument at that time?

A. I talked to students and people that were around and stood just by myself a lot of the time, just watching what was going on, and talked to Mr. Cecil Holland in this time.

Q. Now, he was the news reporter that was here yesterday, was he?

A. Yes, he was.

Q. About how long did you talk to him?

[fol. 700] A. Oh, about fifteen or twenty minutes, then I think I saw him once again for two or three minutes, or saw him in passing as he went one direction and I stayed where I was.

Q. At any time for the rest of the night after you had been on the monument, did you participate in any activities of the crowd which involved throwing things at the Marshals?

A. I certainly did not.

Q. Did you see boys going back and forth past the area where they were carrying bricks, rocks and other things?

A. I saw—

Q. Yes or no?

A. Yes.

Q. Okay. Did you, during that period of time, see a wheelbarrow, a boy pushing a wheelbarrow with anything, rocks or bricks in it?

A. No, I never saw a wheelbarrow.

Q. All right. Now, then, just tell the Jury from this time on—by this time I mean after this second trip you made toward the area of the flagpole, tell the Jury what happened, and what you saw?

A. This is probably around 10:00 o'clock.

Q. Right.

[fol. 701] A. Up around the flagpole you can—I saw people throwing rocks and the gas coming out, but I—probably the most significant incident was I was still back at the monument, or in that area. May I use the map?

Q. Sure.

A. There was a tree here, a fir tree. These are all big pines up about ceiling high and there was a fir tree standing in here, right along here on this side of the road (indicating map) and I spent a lot of time under that. There was a block here, say, right by this light, where I stood and talked to some students during the evening with my foot on a block of concrete. It was a permanent block. I don't know whether it was a curb, but about that high (indicating) and, but at this particular time, we will say around

10:00 o'clock, between 10:00 and 10:30, something like that, I heard and was standing either here or here—I spent my time right in this area mostly, and I heard a student—there seemed to be something, yelling or something about a truce, and somebody went by and I said, "What are the students trying to do?" And, "What are they going to do?" And, "What do I hear?" And he said, "A group of students are going forward to try to have a truce."

And I didn't go directly, but I moved on up into this area to see if I could hear more. You never could be sure [fol. 702] of any of the word you were getting was exactly right, and when I got up here I noticed a group of, say, twenty or thirty students in this area, a little more congested than normal, and it looked like they were being quieter and yelling back and forth to the Marshals.

And I still wasn't sure what this was all about. I couldn't tell what they were saying, but the tone of events was sort of changing, with respect to the students and the Marshals right in this area.

Then I noticed that there were three or four students walking up forward of the group, and they were right up in this area, and then the thing finalized with three or four students—three or four Marshals coming out right here, and beginning to talk to these three students. And I could, by this time, I walked on up into this area, and this group of about fifteen, say, had moved on up here. I was way back behind them, maybe fifty or sixty steps, watching this, and I saw three—about two or three or four of them talking to the Marshals up here in sort of a loud tone. But I still couldn't hear what they were saying.

About ten or twelve students moved up here. So, I easily walked right on up behind this group to see what I could hear, and there was at least twenty steps distance from this three to this group, and I sort of stuck my head in behind those lines of students standing here, and listened to this truce conversation that was going on about—I couldn't tell what they were saying, but it was an argument, and it became pretty—looked like it was a stand-off

and nobody was getting anywhere, and somebody in this group hollered, "Well, you can't do anything with those people," and I didn't say anything. I finally saw that that was about the end of it and I just walked off and left them all up there and walked back in this area here (indicating).

Q. Would you know if there was a flower bed up there somewhere?

A. I believe there was a little tiny flower bed right around this flagpole, but you don't see that much at night. You do recognize it when you cross one of these walks. These are not curbed walks, but this walk is, as I remember, it was just a flat laid brick walk that sort of runs easily into the grass.

Q. All right. Take your seat.

Now, you say there was a bulldozer incident that occurred sometime that night?

A. Well, first, there was a fire truck incident, then there was a bulldozer incident.

Q. Did you participate in that?

A. I certainly did not; neither one.

[fol. 704] Q. What was the fire truck incident?

A. Well, I heard a vehicle coming up from some direction. I never could identify where, but I was back left of the monument standing twenty or thirty yards from the monument and I heard the noise, like a vehicle coming on the campus.

And it—some students,—I said, "What is that?" And he said, "Well, I think somebody has gotten that fire truck."

I said, "Where on earth would they get a fire truck?"

Well, there was some conversation about they would go to town and take it away from the fire department or something—they. And I stood and watched, and this noise finally stopped just short of the flagpole, evidently from the way it was coming, and there was no more vehicle noise any more. I couldn't see where this vehicle come from, I couldn't see the vehicle.

Q. Did you go over in that direction?

A. After the thing stopped and they said there was a fire truck parked over there, why I went over to take a look, and it was short—it was east of the flagpole and just a little to the right of the walk, facing sort of toward Lyceum.

Q. All right, sir. Now, what about the bulldozer incident [fol. 705] dent?

A. The bulldozer was later, as I remember the sequence. The bulldozer—there was a noise coming up from the left, way down south of the Lyceum Building. Sounded like the direction of travel—it sounded like two or three hundred—at night, maybe closer, but it sounded like a couple of hundred yards away at least, from the Lyceum.

And I asked a student, I said, "What is that, sounds like a tank coming." And he said, "Oh, that is that old bulldozer down there on the—grading or something they were doing down there, they have gotten that old thing to running."

And I heard the racket, the noise, the movement of the engine coming closer and closer, and I could hear it sounded like it was up on the left side or south side of the Lyceum Building. I am still back over in this area, over by the fir tree that I designated, right in that area. You still can't see vehicles. You can't see vehicles in front of the Lyceum Building, too dark. You are looking under a dark bunch of trees. And I looked up toward it to see if I could see in. I moved up to about, oh, about a little bit south of the flagpole, wandered on up there, hoping that I could see it, on that walk, along about up to that walk, just south of the flagpole.

[fol. 706] Q. Were you ever—

A. About twenty steps from the flagpole. Huh?

Q. Were you able to see the bulldozer?

A. I never saw the bulldozer, no. I didn't. And then I—a student came by and I said, "What are they doing?" He finally, during the course of the conversation he said, "They are trying to—they are going to put a sandbag on the accelerator, they are going to head it toward the Lyceum Building."

Q. And did you have anything to do with that?

A. Certainly did not. And it didn't get anywhere. The—it wouldn't get anywhere. It took one bounce at the curb, or something, and died. You heard it just go dead.

Q. From there on did you have anything to do with the activities of the students toward the Marshals?

A. I never have had anything to do with the activities of the students toward the Marshals. The answer is no, I didn't.

Q. You say you left about 2:00 o'clock?

A. 1:30 or 2:00.

Q. Where did you go?

A. We went—we walked, just walked off the campus. Nobody knew we were going, or anything. Just tired. I am tired. We went on down to the car where I said it was [fol. 707] parked, got the car and headed back toward the Mansell Motel.

Q. All right. Go ahead and tell us what you did the rest of that night. Skip any irrelevant details you can.

A. We stopped on the way, I would say about half way, I don't know the distances, but it was out of town, and I believe it is beyond—at least half way to the Mansell House.

We stopped at the side of the road. There was a group of people on the right. There was sort of an, old garage, and a commercial building or two sitting out there by themselves, and then there were ten or fifteen Highway Patrol cars sitting on the left of the road in a bunch.

We parked on the right. I talked to three or four people there, including one student who was out of his—run out of his dormitory and didn't have any place to stay. They were hunting places to stay. And one of them said, "You can still hear them." This was an hour later. He said, "You can still hear them shooting on the campus." And we listened to it. And I am not sure I could hear it, but they kept saying, "Don't you hear that?"

And I had talked there for about an hour to a group of people on the right, three to four to five, going and coming, [fol. 708] and then I would move over and talk to the Highway Patrol who had gotten out of their cars and were stand-

ing around talking. I went over and talked to them for ten or fifteen minutes.

Q. Did you see anybody you knew?

A. Well, not right at that time, no, we had been there anywhere from forty-five minutes to an hour or an hour and fifteen minutes. From then on then I called somebody to come down and join us from the other direction, from the Mansell Motel where we were. And they come on down there and joined us, and take us on back to the Mansell.

Q. That is—did you call somebody to come get you?

A. Sir?

Q. Did you call somebody to come get you?

A. Right.

Q. Whose car were you in at that time?

A. Well, up to this time I had been in Louis Leman's car.

Q. Did he go somewhere else then?

A. No.

Q. What was the occasion of your calling somebody to come get you?

A. Well, we knew—we picked up that somebody was [fol: 709] following us as we came out of Oxford. In other words, we had already gotten into Oxford and we turned on this highway, I believe it is 6. And we had—either Louis or I said, "There is a car tailing us, right behind us."

So, we pulled off the road and he went on by. He pulled right over the hill and he stopped. We moved up on him and saw him again and were recognized and we went on ahead again and here he came again. So, it was obvious that he was following us or watching our car. We had known we were followed. We saw a man at the Mansell Tourist Court Sunday morning.

Q. Did you understand whether it was a newsman or some official?

A. Well, it must have been an official. Too new of a car for a news man. It was some designated person. Perfectly obvious.

Q. And go ahead and tell us what happened between then and the time you went back to the motel?

A. Well, I called friends who had come into the motel and said, "Come on down here and join us here, we are right down the road. You will see us, I will watch for you, come on down here and join us." And when they got there I hadn't seen them before since leaving Texas, say, and maybe some of them for weeks or months, and we kind of talked a few minutes, and then we got in their car and left Louis' [fol. 710] car, and we got in their car which actually come—and the car they were driving, and went on back to the Mansell—Mansell Motel.

Q. Did Louis go with you too?

A. Yes.

Q. Where did you leave his car?

A. We left his car sitting there.

The Court: Let's stop at this point for a recess. Ladies and gentlemen, we will recess until a quarter until 11:00. Keep your seat in the audience until after the Jury files out.

(Short recess was had.)

[fol. 711] Q. Now I believe when we took a recess, you were telling the jury about going back to the motel after you changed cars?

A. Right, sir.

Q. And did you spend the rest of the night at the motel?

A. Yes, I did.

Q. Did anything of any significance happen at all?

A. Nothing of any significance.

Q. What time, roughly, did you get up the next morning?

A. That would have been Monday morning, October the 1st. We got up about, oh, about 9:00 o'clock, 8:30 or 9:00.

Q. Where did you go?

A. I went back to Oxford. To Oxford.

Q. Did you go to the University area again?

A. No, I did not.

Q. Where did you go in Oxford?

A. We drove to Oxford within a block of the courthouse square.

Q. Was there any rioting or anything of the kind going on there?

A. No, not at that time.

Q. Was there ever, that next morning, that you had any observation of?

[fol. 712] A. Yes, just before I left town, about 10 or 15 minutes before I left, there were some sporadic shooting and people running and soldiers trying to catch people.

Q. Did you participate in that in any manner?

A. Certainly did not.

Q. Were there military personnel around the town of Oxford when you went down there?

A. Yes, there were.

Q. Did you eat there that day?

A. Yes, I ate what we could get of a breakfast there.

Q. Roughly what time with respect to being early, middle of the morning, or late?

A. Oh, it would have been around, I guess, somewhere around 10:00 o'clock, or 9:30 or 10:00.

Q. Where did you go then from there?

A. We—I left in the car with Louis Leman driving and several other people, for Jackson, Mississippi.

Q. And what happened?

A. We were stopped going out of Oxford, about two miles, at a roadblock, military roadblock.

Q. And what occurred at that point?

A. At the outskirts of Oxford where we were stopped, Lieutenant on a radio and eight or ten soldiers around blocking the roads and checking people going out of town, we were stopped and told we couldn't go any further, to park [fol. 713] on the side of the road.

Q. All right, sir. Continue.

A. And wait.

Q. Continue.

A. We sat in the car and talked to the Lieutenant, who was on a communication system out of his radio jeep to his Commanding Officer, and I heard some of the discussion back and forth.

They couldn't make up their minds about anything or what to do, anything except reporting that I was there, I'm sure.

And that—I told them and they saw—he stopped us across the road from him and he said, "You just as well wait," and we got—I got in the car and sat 15 or 20 minutes and talked to him a few minutes and sat in the car with two ladies that I knew and three men that were in the car. There were about five.

Q. Is that the same car you had left in or was it a different one?

A. That's the same car that I had been in all the time, Leman's car.

We were headed back to Oxford and this was out about, I would say, about two miles from the center of town, on the outskirts of Oxford.

Q. Were all these people with you when you left? Who [fol: 714] was in the car when you left Oxford?

A. These same people, all of them, got in the car after we had some coffee at the drugstore.

Q. All right. And were you taken into custody there at the roadblock?

A. Yes, I was.

Q. By whom?

A. The military.

Q. And what, where were you taken?

A. I was told to get in a jeep. I said I would follow in our car and he said, "No, you would get in the jeep," and we were driven back—I said, "All right, my car will follow."

And I got in the jeep and they drove us back to the Administration Building, the Lyceum, on the campus.

Q. And where were you taken from the Administration Building and by whom?

A. I was taken from the Administration Building to the Federal Building in Oxford, the Post Office Building, right on the courthouse square.

I was taken there by Marshals out of the Lyceum Building.

Q. All right. And what occurred when you got to the courthouse?

A. When I got to the courthouse, why, after standing [fol. 715] around, they didn't seem to know what to do, why, they said, "Come on upstairs," and we were under guard. There were four guards on me from the Lyceum Building. They had held me in custody in the Lyceum for over an hour.

Q. Who is "we"?

You said, "We were under guard."

A. Well, a friend of mine that got out of the car with me, got in the jeep with me and stayed in the Lyceum Building with me. And then he went on to—he got in the car with the Marshals when we drove, when they forced, put us in the car and never released us, kept us under guard, in the Lyceum, and he—he and I, because he got out of the car with me and then we—at the Federal Building, why, the two of us, they said, "Come on upstairs."

We were under guard. And two or three big Marshals, or four. And went upstairs.

Q. Were you taken before a United States Commissioner?

A. Yes, I was.

Q. Were you told that you were being charged with some type of a Federal crime?

A. Yes, while we were up there, after 10 or 15 minutes, why, they finally, somebody came in the door. I think it was a Marshal. And gave me an arrest order, charge.

Q. Was that a warrant for your arrest?

A. Yes, it was.

[fol. 716] Q. And were you able to learn with what you had been charged?

A. Yes, I learned what I had been charged with.

I was charged for assaulting Marshals, for assault, for conspiracy, for insurrection against the Gov—the United States, for seditious conspiracy.

Q. And did this U. S. Commissioner, to refresh your recollection, one Omar D. Craig, did he take any action in your case?

A. Well, after this, and we had been served with the charge or the complaint, why, 10—I don't know what was, they were going to do.

We were sitting in a room under guard and they said—all of a sudden somebody came in and said, "Come this way." And we walked across the hall and they opened their door and there was a whole courtroom set up with 30 or 40 people in it.

Q. And what, right quick, happened in that courtroom?

A. Omar Craig was at the head of the court. I learned his name later. And in that courtroom they said that I was being brought to decide, to determine the amount of the bond.

And I asked them, I said, if—"This has nothing to do with, based on what I have been charged with of moving this out of the State of Mississippi," and then his answer [fol. 717] was no, it wasn't, it didn't have anything to do with it.

And I said to him again specifically, I said, "Is this hearing just for establishing the amount of bond?"

And he said, "Yes, it is," which, of course, is false; that is not true.

Q. Was anything said about a lawyer?

A. Yes, he said, "You have a right to get counsel."

I said, "I can't get counsel here. My counsel would be outside of the state."

And he said, "You—" when he said it, he said, "I'll give you an hour, hour and a half to get counsel."

I said, "I can't get counsel here."

He said, "Well, if you—" Well, he said, "You can either—" the inference was, you can use our counsel.

Well, I didn't want their counsel.

And, "An hour and a half," I said, "I can't get counsel outside of the state."

Q. Did you waive—

A. And I said again—this was probably the time I repeated, this is what I said, "Is this only for the purpose of deciding the amount of the bond?"

And he said, "That is all it's for."

Q. Did you waive your right to a counsel at that hearing?

A. I did not. The conversation ended like that.

[fol. 718] Q. Were you given the right to have a preliminary hearing?

A. I certainly was not.

Q. Did you waive your right to a preliminary hearing?

A. I did not.

Q. And what happened to you then?

A. I said, "Can I have a minute to go out and talk?" Yes. And he said, "Yes," and so we went out in the other room and I took my friend, I said—

Q. Don't tell what you said out in the other room.

A. Okay. And we came on back in and either I repeated some questions or asked him what effect this would have on—if this had anything to do—oh, I also said, "I am going to be free after this is over to go and come as I please?"

And he said, "Yes, that is right, under bond."

Q. And did you make preliminary arrangements to make your bond?

A. I said, "All right, I waive the hearing," when it came to that point.

Q. And at that point then you did waive the preliminary hearing?

A. On the bond.

Q. I see.

A. Right, on making a bond.

Q. All right, sir.

[fol. 719] A. But my previous question was a hearing about anything else they did.

Q. I see. And did you, were you taken then— Strike that. Where were you taken?

A. I was taken back into the room where we had been, just a vacant room with tables and chairs and, let's—we

sat there 10 or 15 minutes and then finally somebody came in and said, "Come on down."

And they took us downstairs to the Post Office Building. This is the building facing the courthouse.

Q. Right.

A. Yeah, the center of the square. It's the Post Office Building in Oxford. We were taken downstairs into a little room on the side of the hall, little tiny room.

And there was a desk there and a phone and a Marshal, or whoever he was, my guard was sitting right in front of me.

Q. And where were you taken from that room?

A. From that room, that was the—I was taken out of the building and on an airplane to Springfield.

Q. Were you given or served with any type of a court order to take you to Springfield?

A. I was not.

Q. Did you know where you were going?

A. They refused to say whether they were taking me to—[fol. 720] where they were taking me—where I was going or give me any telephones to call or let anybody know where I was going.

Q. And what happened to you then?

A. I—oh, when they got me at the bottom—away from the phone and away from the desk and my friend with me, they got me to the bottom of the courthouse, the Federal Building, going out the back door, they turned around and started searching me and taking—searching me and telling my friend he could go no further.

Q. How were you taken to Springfield?

A. We were driven from there to the airport, four men in the car. They got lost going to the airport. Finally got there.

I was gotten out of the car, walked over to a plane that was all ready to go and got on this Ranger plane, it looked like, and marched on the plane.

They wouldn't tell me where I was going, they wouldn't tell me where, where I could phone anybody or where anybody could catch me.

I was put on this airplane and it was ready to go and I heard some of the crew say something about Springfield as I got on the plane. I didn't say anything.

Got on the plane. And engines started and off we went and I looked at the clock, I think about 5:00 o'clock, took off.

[fol. 721] Q. Did you find out where Springfield was, which Springfield?

A. Well, on the plane the only thing I said to anybody on the plane, I said, "Now I heard the word 'Springfield,' is that Springfield, Illinois? Where is this plane going?"

He said, "No, that's Springfield, Missouri."

Q. And did you get to Springfield, Missouri?

A. We landed then at Springfield, Missouri, about an hour and a half later and were met there.

Q. Where were you taken?

A. Somebody met us and we were taken to the Springfield Prison, medical—called a prison medical center, U.S. Prison, Medical Center.

Q. And were you advised what type of an institution that was?

Mr. Gooch: Now, if the Court please—

The Witness: I asked the man in the car—

Mr. Watts: Wait just a minute.

Mr. Gooch: I object to that as a conclusion. It's wholly irrelevant and immaterial to any issue in this case, as to what happened—

The Court: Overruled, Counsel.

Mr. Gooch: Note the exception.

By Mr. Watts:

Q. Were you advised, yes, or no, what type of institution that was?

[fol. 722]. A. Not until I got in the car. I said, "Where are we headed?" When I got in this automobile. It was obvious, the man that was driving was, seemed to be—

Q. I don't care about the driver.

A. And I asked and he said, "You are going to the Springfield Medical Center."

I said, "I object. I don't want to go there." And, "I'm not going there under free will."

He said, "You are going there, that's our orders," and he took me there.

Q. Did you later find out what type of institution that was?

A. I certainly found out immediately what type it was. There was a sign on the road going in saying what it was.

Q. What was it?

A. U.S. Prison, Medical Center.

Q. What, did it have anything to do with mental patients?

A. It's basically for mental patients, criminal, mentally insane.

Q. Were you incarcerated in that institution?

A. I certainly was, in a six-by-eight cell.

Q. For how long?

A. For six days.

Q. Then where did you go after you got out, where did [fol. 723] you go?

A. I went to—I went back to Dallas.

Q. And when you got back to Dallas, did there come to your attention a news report or a couple of news reports, that were printed in the Fort Worth Star Telegram under the byline of the Associated Press?

A. Yes, they did.

Q. And are those the reports that you heard me read to the jury when this trial first started?

A. Yes, I have heard those reports read to the jury.

Q. Will you tell the jury please, sir, just what effect it had upon you when these Fort Worth Star Telegram reports of the Associated Press came to your attention?

A. Well, it's very humiliating and degrading and, of course, very hurtful, hurt your sense of feeling and it's depressing and just unbelievable that these sort of reports could be going out clear all over this part of the country where I have so many friends and all over the west part of the state, in this Fort Worth Area, and even into the Dallas Area, saying that you had been leading charges on a campus of students and then that you are six days in a cell for insane people as a criminal.

Mr. Gooch: Just a minute.

Mr. Watts: Just a minute, skip the insane.

Mr. Gooch: I move the answer be stricken. That is not [fol. 724] in this case.

The Court: Sustained. The jury is instructed not to consider it.

By Mr. Watts:

Q. Now I am talking strictly about these articles in the Fort Worth Star Telegram, about your leading this charge.

A. Oh, I see. Well, that I am leading a charge and that this is putting out the word, it would make anybody naturally look like they were crazy, people and your friends and everybody all over the country would think you were crazy that read the press saying that.

Mr. Gooch: We object.

Mr. Watts: Don't say what they thought, that's right.

The Court: Sustained. The jury is instructed not to consider it.

The Witness: Well, this is my feelings—

Mr. Watts: Let him—

The Court: Just a minute.

The Witness: I'm sorry, Your Honor.

The Court: The jury is instructed not to consider any part of the answer relating to what someone else may have thought about the reports.

By Mr. Watts:

Q. Well, what I am trying to get is, what you thought in your own mind when you read this article that you, as [fol. 725] a former Major General of the United States Army, had led a charge of students.

A. Well, I felt humiliated, after being in the service for 30 years, and you got millions of friends in the service and then you, as a Major General, I was humiliated and degraded throughout the entire military service as well as—

Mr. Gooch: We object, as to where he was degraded.

Mr. Watts: What you thought.

The Witness: Let's stick to the Fort Worth and Dallas and friends in Texas—

Mr. Watts: Wait just a minute. He wants to object.

Mr. Gooch: I move the answer be stricken from the record.

The Court: It's stricken.

Mr. Watts: That's right.

The Court: The jury is instructed not to consider it.

By Mr. Watts:

Q. Now what I am asking you is what you thought in your own mind when you read this article in the Fort Worth Star Telegram. You have covered it fairly well but finish the rest of it now as to what impression it had on you personally.

A. Impression of humiliation.

Q. How long had you, as an individual, been reading [fol. 726] this newspaper?

A. I read this newspaper all—off and on all the time when I have been in Texas, from time to time.

Q. All your life?

A. Right.

Q. And what was the position with which you, as an individual, had held the Fort Worth Star Telegram all of your life?

Mr. Gooch: I object to that as wholly irrelevant and immaterial to any issue in this case.

The Court: Overruled.

Mr. Gooch: Note our exception.

By Mr. Watts:

Q. Go ahead and tell the Court and jury.

A. Well, it's one of the major press papers in the State of Texas and certainly it has a high circulation among farm and ranch people all over the South, southwest part of Texas, and you find it everywhere in ranch people and where my many friends are and where I am known and where I know people, and just humiliation to think about it and I was—I thought about it night and day for a long time. It's just a—

Q. Did it affect your sleep any?

A. Well, sir, certainly, you end up nights thinking about what you can do to bring—to recover.

[fol. 727] Q. Did you have any way to explain or to counteract this publicity?

A. No, no way. You just know it's gone out and that's what everybody's thinking, they have every right—

Mr. Gooch: We object to what everybody is thinking.

Mr. Watts: Don't tell that.

The Witness: All right.

The Court: Sustained.

By Mr. Watts:

Q. Just tell what you thought, not what the others were thinking.

Mr. Gooch: Move the Court to instruct the jury not to consider it.

The Court: The jury is instructed not to consider the last part of the witness' answer relating to what anyone else may have thought when they read the article.

By Mr. Watts:

Q. In other words, just tell what you thought they thought—

Mr. Gooch: They thought?

The Witness: What I thought they thought?

Mr. Watts: Strike that.

By Mr. Watts:

Q. I am trying to find out what you thought up between these two ears (indicating). I don't care about anybody else.

A. Well, I thought I was well humiliated, well degraded, [fol. 728] well deceitful and false information.

Q. Did you consider that prior to that time you had any type of reputation in the area where you were born and raised, so far as being a peaceable, law-abiding citizen was concerned?

A. Well, I certainly did. I—

Q. Had you ever been at any time charged with a crime before?

A. No, I hadn't.

Q. Now speaking of crimes, what finally happened to you, so far as these charges of crime were concerned?

A. These charges were all placed against me on October the 1st, and the Government found, or the—the charges were all dropped, the court found—

Q. You don't know what the court found.

A. Well, the charges were dropped, and insufficient evidence, there wasn't any proof of it.

Mr. Gooch: Just a minute.

Mr. Watts: No, you don't know anything about the evidence.

By Mr. Watts:

Q. You had been out up until the time these charges were dropped, you had been out on bond, hadn't you?

A. That's correct.

Q. Was your bond released?
[fol. 729] A. Yes, my bond was released. The charges were dropped.

Mr. Watts: I believe that's all.

Cross examination.

By Mr. Gooch:

Q. General Walker, I believe you have testified that you were born in Center Point and I believe that's in Kerr County, I guess?

A. Yes, sir.

Q. That is a rather stable, God-fearing, law-abiding community, is it not?

A. Yes, sir.

Q. You came up in the atmosphere that law and order must be obeyed, didn't you?

A. Yes, sir.

Q. You attended the schools there in Center Point and then the Shriner Institute, I believe you have stated?

A. Yes, sir.

Q. Shriner Institute is a military school, is it not?

A. I believe it had an organization in it and it's by choice.

Q. All right. And did you take the military training afforded in Shriner Institute?

A. No, I did not.

Q. Shriner Institute is a private school as distinguished [fol. 730] from a tax-paid school, is it not?

A. It may still be. I believe it was at that time.

Q. It's a very good school and you can get a good education there, can you not?

A. Yes, sir.

Q. You are taught law and order there, aren't you?

A. In all schools, yes.

Q. Then you went to New Mexico Military Institute?

A. Right, sir.

Q. Is that a military school?

A. Yes, sir.

Q. Did you have any choice there but to be in the military units?

A. No, it's a state school.

Q. And the courses there are based on, as well as academic education, based on military ideas and ideals, are they not?

A. Yes, sir.

Q. Then from New Mexico Military Institute, I believe you stated that you entered West Point, is that correct?

A. Yes, sir.

Q. You do not attend West Point as a matter of right, do you?

A. Will you restate that question?

Q. I say, you do not attend West Point as a matter of [fol. 731] right; I mean by that, General, that you must be appointed, based on qualifications, is that correct?

A. Yes, sir, but anybody has a chance to apply for those qualifications, anybody in the country.

Q. I realize that, but you can't enter West Point like you would enter the University or TCU or some place of that sort; you have to apply and it's competitive, isn't it?

A. There are some more requirements but you have requirements for every school.

Q. All right. But you have to receive an appointment from some Senator, or Congressman or the President, to get in West Point, do you not?

A. No, sir.

[fol. 732] Q. Well, I have been misinformed.

A. You have, Mr. Gooch, because you can get an appointment from other sources. You can take it competitive.

Q. What are the other sources?

A. Competitive examination.

Q. Doesn't the appointment still have to come from a Congressman, a Senator or the President of the United States, even after the competition?

A. The source of that appointment can come from other sources. As I understand, they can—they may come through those hands, but they are based purely on com-

petition, and they may come without the people seeing the person or knowing them.

Q. Did you go there on competition, or were you appointed?

A. I was appointed from Texas.

Q. All right. You took the four year course, I assume, at West Point?

A. Yes, sir.

Q. Is that a school that is designed, among other things, to teach leadership?

A. Not just for that purpose.

Q. No.

A. It teaches leadership.

Q. I said among other things, General.

[fol. 733] A. Yes, sir.

Q. You completed that course there at West Point within the four year allotted period of time, did you not?

A. Yes, sir.

Q. At the time of your graduation from West Point I believe you stated yesterday that you had an option to either go on with the Military career, or resign, is that correct?

Mr. Watts: If Your Honor please, that is—a—

A. No, sir, not exactly.

Mr. Watts: No such thing.

The Court: He is asking, and he answered.

A. It is changed from time to time. Whether it is two or four, I don't know what it is now. But they can keep you in the Service for a certain length of time.

By Mr. Gooch:

Q. That is my point.

A. That is the requirement, see.

Q. My next—

A. Then—but everybody knows that before they come in, so you see there is no decision to make when you come

out of there. Now, if a boy wants to get out, he can get out whenever his time is up, whatever that happens to be, two or four years. It is varied. Sometimes they are not too strict about it. On whether there is a country emergency, whether they don't need them, or they do.

[fol. 734] But, in general, everybody goes to West Point with the idea that that is a career for them, and then quite a few of them drop out after their time is up.

Q. My point was that after a certain length of time, which you say varies from time to time, you have your choice of either staying in for a Military career or resigning your commission, is that correct?

A. Generally, yes. Nobody presents this choice. You just go—you don't consider it. Yes, the answer is yes.

Q. You elected, then, of course, to make the Military your permanent career by staying in, did you not?

A. Yes, sir.

Q. All right. It is obvious I don't know too much about the rank and file above that of corporal, but as I understand, you come out with a Second Lieutenant's commission, is that correct?

A. Yes, sir.

Q. And I believe you stated, and I may be in error in this, that you got out in, did you say 1930?

A. '31, sir.

Q. 1931. And you rose rather rapidly through the ranks from Second Lieutenant to Major General; is that correct?

A. I rose along with my classmates.

[fol. 735] Q. Are the—strike that.

Is the procession from a Second Lieutenant to a Major General based entirely on seniority, or is it based on aptitude and training, and records?

A. Both.

Q. All right. Did you advance along with your classmates, or did you surpass some of them, or some of them surpass you?

A. Some of them surpassed me and I advanced along with some of them.

Q. Did you surpass any of your classmates?

A. Yes, sir.

Q. All right. Now, you spoke yesterday of after you graduated from West Point that you have opportunities, and I didn't know whether you said opportunities, obligations or commands, to continue your Military education. Which is it, General?

A. You have the requirement and opportunities both, in the Military Service.

Q. All right. That is the question I am asking you.

A. Both, sir.

Q. And I believe you stated you availed yourself of opportunities to do some work in the air division, Air Force?

[fol. 736] A. Right, sir.

Q. As a commando, or guerrilla warfare?

A. Right, sir.

Q. And perhaps artillery, or was artillery originally what you set out to be?

A. Artillery is basically right.

Q. All right. Now, in the training for this commando, or guerrilla warfare—by the way, what is guerrilla warfare, General?

A. It is warfare in smaller groups with less organization; a large organization getting special training to fight guerrilla warfare, like you have seen reported in Vietnam.

Q. It is sort of small group action that requires special training to rush in rather quickly, hit an objective and withdraw, being able to live off the land, something of that sort?

A. To have guerrilla training you must have all other training, and this is on top of the other training you have had, and that includes to fulfill any requirement of striking the enemy in any size numbers.

Q. All right. And that, as distinguished from drawing battle lines and digging trenches and digging in, shall we say, for a long siege, is that correct?

A. Basically right, yes.

[fol. 737] Q. All right. Now, when did you receive your commission as a Brigadier General?

A. I received it in 1953, on leave in Texas.

Q. 1953. Now, that was based, I believe you stated, on seniority, on leadership, on education, and perhaps I don't know, but maybe you can enlarge on, but at least are those factors considered in your advancement?

A. Yes, they would have to be, like they are in any profession.

Q. All right. You mentioned also in your direct examination that up to around, and I believe I am correct, I am not sure—sometime around '60 or '61 you were in command of the 24th Division in Germany; is that correct?

A. From '59 to '61.

Q. Yes, sir.

A. Right, sir.

Q. All right. I believe you also said with considerable pride that you thought the 24th Division was the best outfit you had seen?

A. Yes, sir.

Q. And you attributed that to your leadership, did you not?

A. Not entirely. I had some good men in it, and they made the organization.

Q. That's right. It takes all men to make the organization, is that right?

A. That's right, sir.

Q. The General is successful when he can get the cooperation of the subordinates, isn't he?

A. That certainly helps.

Q. It also permeates from his own staff down into the foot soldiers, shall we call them, the privates.

A. Even the corporals, Mr. Gooch.

Q. All right. You took a good deal of pride in the fact that you had been able to bring that 24th into what you considered a great organization, is that correct?

A. Yes, sir.

Q. Now, prior to the time you had the 24th in Germany you stated that you had an assignment in the State of Arkansas. Can you tell us when you received the assignment to the State of Arkansas?

A. Well, sir, I received it before I left Hawaii, and I had some leave in there on change of station and—say a month and a half or two months.

Q. Well, I was just trying to get at the timing that you were in charge of the Arkansas—and frankly I didn't get just the correct name of your title in Arkansas. Will you give me that, please, sir?

A. Arkansas Military District, parenthesis Reserve, I believe, parenthesis closed, and then the title changed during that period of time because we were doing—reorganizing the Reserve all over the United States, and it had something in it with regard to Corps 8—no, I have forgotten it. Maybe General Watts will remember. I think part of Oklahoma was in it. 8th. Corps Reserve?

Mr. Watts: 19th.

A. 19th Corps Reserve.

Mr. Gooch: You mind letting the witness testify?

Mr. Watts: Excuse me.

By Mr. Gooch:

Q. My question originally was: Do you remember when you assumed command of the Arkansas unit?

A. I went there within two or three days of the first of September, as I remember it.

Q. I was trying to get it as related to the time of the Little Rock incident.

A. Yes, sir.

Q. Which you have testified about.

A. Right, sir.

Q. And would you say about how many days you were in charge of the Little Rock contingent before the Little Rock incident occurred?

A. About twenty-five or thirty days.

Q. At the time you went to Little Rock I assume you knew nothing about an incident that might occur later on? [fol. 740] A. No, sir, I didn't.

Q. I believe you also testified, coming down chronologically, that you resigned your commission as a Major General in 1961?

A. Yes, sir, I did.

Q. At that time I believe you also stated, and contradict me if I am wrong, that you had an option of retirement or resignation; is that correct?

A. Well, they wanted me to retire but I didn't want to, so I resigned.

Q. I assume the answer to my question is "yes", you could either take a retirement or you could resign, is that correct?

A. Yes.

Q. All right. Now, had you taken retirement, I believe you testified that your emoluments, pay and fringe benefits and so forth would have amounted to around \$15,000.00 a year?

A. Something in that area, right, sir.

Q. And by your resignation you forgave or forfeited any right to that retirement benefit; is that correct?

A. Right, sir.

Q. Then you returned to the State of Texas, you stated. Now, you stated yesterday, without giving a reason, that [fol. 741] you had reasons for retiring—I mean for resigning from the Army rather than retiring. Did you make those reasons known at the time you resigned rather than retired?

A. Not all of them, no, sir.

Q. Well, did you make some of them known?

A. Yes, sir.

Q. What were your reasons, or some of your reasons, if you don't care to give them all, as to why you resigned rather than retired?

A. Well, the difference between retiring and resigning is the pay, and you are in subsidy of the Government, the

taxpayers money, when you retire, and I felt that I wanted to be able to speak, if I wanted to speak, or if I decided to say anything, I wanted to be able to free to say just what I wanted, and without any strings attached, and I didn't feel that it would be fair to everybody and say everything you want when you want, so I wanted to resign.

Q. You wanted full freedom to express your opinion on any subject that you cared to; is that a fair statement?

A. I wanted the freedom as I have stated, Mr. Gooch.

Q. You wanted the guarantees of the Constitution of the United States of freedom of speech, did you not?

[fol. 742] A. I just changed, Mr. Gooch, from the title of General to the title of Mister, and I expected the things to happen that happen when you do that.

Q. You expected what?

A. I expected the rights and so forth to change as it would from getting out of the uniform of a General to getting into civilian life. I wanted the title Mister, not General. That is the way I am now. I have no right to be called by the title of General. People can call me whatever they want to, but I don't sign my name General, and I don't intend to, and I don't have any right to. I am a Mister.

Q. Do you object to my calling you General?

A. I can't object to it, no, sir.

Q. The rank of Major General is a respected rank, is it not?

A. A General in the Army is a very respected rank, yes, sir, and certainly some of the other ranks ought to be more respected.

Q. And the rank of a Major General is respected in all climbs among all people, is it not, sir?

A. Yes, sir.

Q. It is rather a sacred trust, isn't it?

A. So is corporal.

Q. Well, I believe a Major General is just a wee bit [fol. 743] higher than corporal, if I am not mistaken; is that correct?

A. Yes, sir, you are right.

Q. All right. Now, upon your resignation from the Army I believe you stated you went back to your home for a short period of time and then moved to Dallas. At the time of your resignation, did you receive a considerable amount of publicity concerning your resignation and the events leading up thereto?

A. Yes, sir, there was quite a bit of information in print about it.

Q. Did you then decide upon a political career, speaking career, or what, General?

A. I decided to speak and talk to people and—

Q. Did you expect to receive some kind of emolument from the speaking you engaged in?

A. Well, I assume I did. I had to have some way to live.

Q. Was that the way you chose to live, by your speaking engagements?

A. Partially.

Q. I don't intend to pry into your financial affairs, unless you want to reveal them, but \$15,000.00 a year is a good deal of money, isn't it, General?

A. Quite a bit.

[fol. 744] Q. You felt you could manage on your speaking engagements as well, I assume, as you could have on your retirement pay?

A. Basically, at that time, Mr. Gooch, I just considered I could always get a job. I wanted to be Mister and get a job.

Q. Did you apply for a job?

A. Well, I talked to people about jobs.

Q. Did you ever take a job?

A. Well, a fringe one, you might say, or semi-one.

Q. What was that job?

A. Well, as you asked me about later, did anybody ever pay me for anything, I will say, "Yes, they did."

So, not much of a job, but fringe things. I have done things that people have paid me for.

Q. What was the first job you had after your resignation?

A. Well, the first job you might say, first started with my Dallas speech in December, I believe December or January, '61 or '62. December if it was '61, or January if it was '62.

Q. It must have been '61, because you made a lot of speeches before September, 1962 didn't you, General?

A. Quite a few, yes, sir.

Q. Where did you make your maiden speech? Do you [fol. 745] recall?

A. Made my major speech?

Q. Your maiden, first speech you made after you got out of the Army.

A. My first speech was made in Dallas, as I recall, to about 6,000 people, with a committee from all over the State of Texas, to include, I believe, Gov. Coke Stevenson as Chairman; ex-Gov. Coke Stevenson.

Q. Did you receive pay for making that speech?

A. There was no plan before the speech to pay me. I believe after it was over they had a little money left over that they gave me.

Q. From then on down to the present, have you engaged rather extensively in speech making all over the country?

A. I have been making speeches across the country, yes, sir.

Q. Is there a constant demand on you and your time for speaking engagements, General?

A. Yes, sir, off and on and continuously, yes, sir.

Q. Has that continued right on down to the present time?

A. Well, there have been changes when it went up, the requirement, and when it went down through this period.

Q. You mean it has fluctuated?

[fol. 746] A. It fluctuates.

Q. Did it fluctuate before the Oxford incident, or have you been more in demand since the Oxford incident than you were before?

A. I certainly wouldn't say that following the Oxford incident it went up. Certainly it didn't.

Q. Well, did it go down?

A. Well; it wasn't going up, it wasn't staying where it was. Yes, sir.

Q. All right. How many times did you have speaking engagements prior to the Oxford incident? Do you have any records of that?

A. No, I don't have any records.

Q. Do you have any record of how many you have made since the Oxford incident?

A. No, sir, not in—not laid out anywhere.

Q. All right. You testified a moment ago you did gain—have some employment shortly after or sometime after your resignation? Where was that employment? You said the Dallas speech in December, I believe you said, of 1961; that would have been about a month after you got out of the Service?

[fol. 747] A. No, sir, I didn't say I had a job, had a job or anything. I had a consultant card that I used and then I—

Q. Who employed you?

A. I was paid once or twice for contact work which—

Q. By whom, please, sir?

A. Mr. Arthur Leman.

Q. Is that the father of the young man who testified here yesterday?

A. Right, sir.

Q. That was with the Southwest Oil Products, I believe he stated was his employer?

A. Yes, sir, down in Houston.

Q. You did some work for them?

A. Contact work, yes, sir.

Q. In the nature of what, please, sir?

A. Oh, it's oil well equipment and oil field equipment and as I knew a lot of people and was going around the country, why, I could ask people if they couldn't use Southwest Oil Products.

Q. General, didn't you testify on your deposition that it was to talk about Americanism?

A: Yes, I— That's part of the contact work with respect to their factory, and so forth. I was in their firm two or three times and talked around the men in the factory.

[fol. 748] Q. All right. Now you stated that your first major speech or maiden speech—it must be coincidental—was made along in September of 1961, or January of 1962, do you remember which it was?

A. May I refresh my memory off of—

Q. Yes, sir.

Mr. Watts: What would you like to have? The deposition? What would you have—

(Witness leaves witness chair and returns.) -

A. Dallas, December the 12th, 1961.

By Mr. Gooch:

Q. It has been called to my attention by my associate counsel that I inadvertently said 'September.' I meant to say December, 1961 or January, 1962.

A. Yes, sir, I think, answering the question, was about the Dallas speech?

Q. Yes, sir.

A. It was in Dallas on December the 12th, 1961, sir.

Q. That was about a month and a half after you got out of the Army, is that correct?

A. Yes, sir.

Q. Now, General, are you a member of the John Birch Society?

A. Yes, sir, I am a home member.

Q. How long have you been a member of the John Birch Society?

[fol. 749] A. I joined the John Birch Society when I was in Little Rock: I think it was the spring of '58 or '59. '59, probably.

Q. Are you active in that organization?

A. Not too active.

Q. Do they provide speaking engagements?

A. I'm too busy.

Q. Do they—

A. Sir?

Q. You are too busy, did you say you are too busy to take part in that organization?

A. Yes, sir.

Q. All right. Is your time pretty well occupied, General?

A. Yes, sir, I think so. Maybe some of it is wasted but I stay pretty busy.

Q. Are you able to keep something going at all times, is that correct?

A. Oh, I am interested in what's going on all the time.

Q. Do you do a good deal of writing?

A. Yes, sir, but I am not good at it.

Q. Well, do you do it, that's the question I'm asking?

A. Oh, research and reading and writing.

Q. Do you sell it?

A. Yes, sir, after it's well-edited and read over and takes [fol. 750] a lot of time to get my writing into print because I am not—

Q. What is the name of your publication?

A. We go under the name, I and one other fellow, as "The American Eagle Publishing Company."

Q. And where is that located?

A. In Dallas.

Q. And how long has it been in existence?

A. Sometime in 1962, say the—I don't remember the exact date. June, July, August, somewhere in the center of 1962.

Q. Who is your associate?

A. Mr. Robert Surrey.

Q. Does it have a subscription list or do you sell it by the copy or do people subscribe to it or how do they pay for it?

A. We don't have any regular publication. Whenever I get something on a particular subject or that I think would interest people, why, I, we print it under the title of the

American Eagle Publishing Company and send it to friends or distribute it or we do have a subscription group that is set up just to get anything we print at any time.

We have got no regular—and they were told they have no regular time of publication.

Q. Do they pay a subscription fee for it per year?
[fol. 751] A. A group of people do.

Q. About how many subscribers do you have, General?

A. About 250 or 300 subscribers. Sir?

Q. Are those the subscribers?

A. Yes.

Q. How do the others purchase copies of the publication?

A. Well, there are friends in different areas and they see a copy with them. We often send out a mailing of two or three thousand to our friends.

Q. And do they pay for that when they receive it?

A. Not that I—some do, some don't.

Q. Well, now you mentioned in your deposition, "Friends of Walker."

Is that the same as the publication list of the American Eagle Publishing Company?

A. No, but they overlap. No, sir, but they overlap.

Q. What is the organization known as "Friends of Walker"?

A. Just a vague organization. They are groups in the country that call themselves "Friends of Walker". There are some in California, there are some in Arizona and there are some in Dallas and they are different places. They have—people step up and say, "We are friends of Walker," and that's all they say.

[fol. 752] Q. Do they make a contribution to you?

A. Some, as groups, and some as individuals. It's—there is no organization in particular to it.

They may have organized a little group locally and call themselves, "Friends of Walker".

Q. Are those groups still in existence?

A. Oh, I think so.

Q. Now in the spring of 1962, did you take a venture into politics?

A. Yes, sir.

Q. Did you announce for the office of Governor of the State of Texas?

A. Yes, sir.

Q. Do you know where you made your announcement?

A. I believe I made it in Austin, sir.

Q. Well, I was just wondering. Some of the reports, or one of your publications said you may have made it in Chicago. I wasn't sure about that.

A. I may have.

Q. Well, do you remember where you made it?

A. I have a Chicago speech here. February the 9th, 1962, and I believe I—I believe the sign-up date, if it's the same as it was this year, which I don't remember, is February the 3rd. Is that right?

Q. I think that's somewhere around near. I was just [fol. 753] trying to find out where it was that you made your first announcement?

A. I don't know, sir.

Q. But anyhow, you did subject yourself to the primaries for the year 1962?

A. Yes, sir.

Q. You made an extensive campaign, did you not, General?

A. Yes, sir, that's where I met Mr. Leman.

Q. You covered the state as best you could during the time from your announcement until election day, did you not?

A. Yes, sir, that was my objective.

Q. You received press reports concerning your ideologies and ideas during the Governor's campaign, did you not?

A. Yes, sir.

Q. And you were serious about running for the Governorship, weren't you, General?

A. Yes, sir.

Q. You weren't running for the governorship just for publicity, were you?

A. I was running to be Governor of the State of Texas, Mr. Gooch.

Q. Along with the duties of the Governor of the State of Texas is one of the leadership of the people of the State, is it not?

[fol. 754] A. Yes, sir.

Q. You wanted to be the leader of the people of Texas, or you wouldn't have announced for Governor, is that correct?

A. Wanted to be Governor of the State of Texas.

Q. All right. Now, after your race for Governor, which I believe, the primaries were in May of 1962, I believe they were, is that correct, General?

A. I don't know.

Q. Anyhow, after the race for Governor in May of 1962, you did engage in speaking engagements thereafter, did you not?

A. I was campaigning throughout the State of Texas.

Q. No, I mean after the election, did you still continue to make speeches?

A. Yes, sir.

Q. Did you usually receive press notices and coverages on the speeches you made?

A. Maybe so, maybe not, sir.

Q. Well, there has to be some publicity concerning a speech or a speaker before you can get an audience, doesn't there, General?

A. Yes, sir, but they can sure let you go into town and not say a word about it.

Q. I am getting down to the next question. You stated [fol. 755] that you had been able rather successfully to get press conferences because the press sought you out and on occasions you sought the press out; did you make that statement, somewhat to that effect?

A. Yes, sir, about a certain area and time, yeah, that's a good statement. Yes, sir, I'll stick by it.

Q: All right. You were able, were you not, at most any time you choice to get a group of reporters, when you would advise that the—advise them that you had a statement to make, is that not a fact?

A. What period are we talking about? During the campaign?

Q: During the campaign and after the campaign, down, we'll say, until September 30, 1962?

A. Mr. Gooch, it doesn't matter how many, whether you get a group of reporters or not. It's what they say after you've talked to them. You can talk your head off to a group of reporters for two hours. They question you and then they go out and print nothing and you are just wasting your time.

Or they print something that doesn't mean anything. I don't think it means any particular thing, my answer, I'm not trying to—but the point is, it's a question of what they say, it's not whether you get a group of physical people looking at you. They'll come and look at you any time and [fol. 756] you'll think, "Oh, boy, this is going to be great." And when you get through, there is nothing in print. Or they put it down when it doesn't say what you intended or it's drawn out of context.

Now right now, the whole thing is, the effort—nobody will say anything you say about foreign policy or Cuba or DM or—they won't even talk about it.

They won't even mention MacArthur, what I say about MacArthur. So what's the point about getting a bunch of people together? I'm not—this is off the—just so it's understood. It doesn't quite make it clear that when—just because you can call people together,—oh, they'll come together. I have had the most wonderful groups of people together, say, in Portland, and some of the biggest press conferences I ever saw.

When you get to looking for what happened, nothing.

Then you try to go into a town, many places, or you are going into a town for a speech, if they don't want to carry you, they won't. You would think they would that day. And

then sometimes else you may think, "Well, maybe they won't carry that," and maybe they will say something good about you or at least tell the public you are there.

Q. Anything else, General?

A. Oh, there are a lot of things, Mr. Gooch, but we can go on with your story.

[fol. 757] Q. Go right on, if you have got something else to say.

Mr. Watts: If Your Honor please, I don't think this is proper testimony.

The Court: Let's go on.

Mr. Gooch: He hasn't answered the question. I will re-ask the question. I asked him if he had any difficulty in getting press conferences. That was the question I asked to start with, Your Honor.

Mr. Andress: I think he answered it, Judge. Said he could always get a group of people together.

The Court: You may answer it again.

The Witness: Your Honor?

The Court: You go ahead and answer the question.

The Witness: Will you repeat the question, sir?

By Mr. Gooch:

Q. Did you have any trouble from the time you started making your speeches—we will generalize now—from December of 1961 down to September 30th of 1962, getting news reporters, newspaper reporters to come to you when you wished to have a press conference?

A. Yes, I do.

Q. All right, tell me about it.

A. Many times when your most important subject comes up, situation of what's going on in this country or things that I would know about, the press doesn't want to hear about it. Not going to print, so there is no use them coming [fol. 758] to me.

Q. Have you been denied at any time a press conference when you had asked the press to come and receive a statement from you?

A. I don't have any right to make them come to me, sir.

Q. That wasn't what I asked you. Have you been denied—have they told you they weren't going to come and listen to you at any time?

A. I wouldn't be put in that position. I wouldn't give them that chance.

Q. Then I assume when you have called a press conference, you have received the press, is that correct?

A. When I called a press conference, I have received the press, the press has come, as I remember, except there have been times when the press didn't show up, as we thought it would, or I thought it would.

Q. Well, I'm just asking the question now, which I will repeat once more, at the times you have asked for a press conference, you have gotten a press conference, haven't you, General?

A. Basically, yes, Mr. Gooch. Right.

Q. All right. All right. Now in September or let's go back a little further, from the time that the primary was over in May of 1962, when you ran for Governor, and the 30th day of September, 1962, did you learn of the litigation [fol. 759] in the State of Mississippi concerning the entry of one Meredith into Ole Miss University?

A. In general, I learned about it, right.

Q. Did you consider at that time and during that period that the question of integration throughout the United States, and particularly the South, was a subject of national interest and perhaps national controversy?

A. Yes, sir.

Q. Did you keep up generally with the Court battle involving the entry of Meredith into Ole Miss?

A. Oh, not in detail from day to day. Just in general.

Q. Did you learn prior to September 30, 1962, that the Circuit Court of Appeals at New Orleans had made a final order directing that Meredith be entered as a student in the University of Mississippi?

A. I knew an order had been—a court order had been issued. I don't remember whether I knew it was the Cir-

cuit Court—that Meredith would be entered in Mississippi, yes, sir.

Q. Well, you knew that long prior to September 30, 1962, that the Courts had ordered the entry of Meredith into the University of Mississippi, did you not?

A. Yes, sir. Yes, sir.

Q. You were well aware of that prior to September 25th [fol. 760] or 26th or 27th, 28th, 29th or 30th of September, were you not?

A. Yes, sir, I was aware of it.

Q. You knew that the Courts had said that Meredith must be entered, did you not?

A. In effect, yes, sir.

Q. You knew that, or did you know that Governor Ross Barnett was opposing the entry of Meredith into the University of Mississippi?

A. Yes, he was, sir.

Q. Did you ever learn from any source that Governor Barnett ever changed his position in opposition to the entry of Meredith into the University of Mississippi?

A. Changed from opposing it to not opposing, or assisting it?

Q. That's right.

A. From opposing it to assisting it?

Q. Or being passive about it? Let me rephrase the question:—

A. No, sir, as far as I am concerned, he was opposing continuously the entry of Meredith.

Q. And that was right on down to the time that Meredith was actually on the campus, wasn't it, General?

A. As far as I know, he was.

Q. And, as a matter of fact, in your speech to the stu- [fol. 761] dents on the campus, you told them that Barnett was still standing fast against the entry of Meredith on the campus, didn't you?

A. As I remember, in my speech, it was, as I said it, that I told them that Barnett had not betrayed them and that Barnett, in effect, that Barnett is standing opposing, the same as he had been standing all the time, was my idea.

Q. You knew that Barnett was openly defying the judgment of the Federal Court which ordered the entry of Meredith into Ole Mississippi, didn't you?

A. I knew that he was opposing it.

Q. You knew prior to the time that you had any utterances relative to going to Mississippi that Governor Barnett had blocked the entry of Meredith into the Registrar's Office at Ole Miss, didn't you?

A. You—the question with respect to him personally?

Q. Yes, sir.

A. I knew he had been on the campus and that he had stood opposing and blocked the entrance of Meredith, yes, sir. I think that answers the question.

Q. It does. Prior to the time that you went to Mississippi, were you or not informed that Governor Barnett, as well as the Lt. Governor, had been held in civil contempt by the Circuit Court at New Orleans for forcibly blocking the entrance of Meredith into the University of Mississippi?

[fol. 762] A. I don't know that I had heard that, if you can refresh my time and the date of that, I might be able to say but I don't think I had heard it, but he may have.

Q. I think it was around the 25th of September.

A. Now this was contempt?

Q. Yes, sir.

A. That Barnett had—question, sir—

Q. As to whether or not Governor Barnett had been held in civil contempt by the Circuit Court of New Orleans for disobeying the orders of the Circuit Court?

A. Yes, sir, and there had been an appeal made and that Barnett, as representative of the state, had a requirement before the Supreme Court to go back into court and to be heard for himself and the State of Mississippi.

Q. All right.

A. And this was the position, as I understood it, about that time.

Q. But you did know that an Injunction had been issued out of the Circuit Court in New Orleans prohibiting Bar-

nett, Jackson (sic) and those knowing about the Injunction, for Barnett and Johnson and the School Board to cease and desist from preventing the entrance of Meredith into the University of Mississippi, did you not?

A. I understood that was a ruling in some court. I'm not sure that I knew that was the—which court it was. [fol. 763] But I knew that had been a ruling in some court and I—there was other activities on the other side that had gone about in the Courts, opposing that.

Q. All right. But you did know that there was a court order decreeing that Meredith be entered into the student body at Ole Miss as early as, we'll say, the 25th of September, 1962, did you not?

A. As early as—what date?

Q. September 25th of 1962?

A. Yes, sir.

Q. Now General, are you familiar with how the processes of the Federal Courts are carried out?

A. I wasn't too familiar at that time. I am becoming more familiar all the time.

Q. Well, you know that the United States Marshals serve the same function in Federal Courts as Sheriffs and Bailiffs and Deputy Sheriffs in State Courts?

A. I don't know that I considered it. That they have the same functions as the Sheriffs in a county?

Q. Yes, sir.

A. No, I wouldn't consider that they had the same functions as the county.

Q. No, I said insofar as enforcing the judgments of the court, did you have any knowledge—

A. Oh, you have a right to force the en-judgment (sic) [fol. 764] of a court by Marshals, right.

Q. That's the very question I asked you.

A. Right, sir, that's what I wanted to tell you. Sure, I know that.

Q. All right. And that the Marshals are charged with the duty of enforcing the judgments of the Federal Courts, are they not?

A. Yes, sir.

Q. And you knew—

A. I don't quite compare them to Sheriffs, though.

Q. Well, I was trying to draw an analogy. I don't know that I am slandering either one of them. I respect both offices.

A. So do I, Mr. Gooch.

Mr. Watts: I don't think that's a proper comment, if the Court please.

The Court: I don't think there was any harm by it, Counsel.

Mr. Watts: No, I don't think there is any harm.

The Court: Let's recess until 2:00 o'clock, Ladies and Gentlemen.

(Thereupon, at 11:57 a.m., a recess was taken until 2:00 o'clock, p.m., of the same day.)

[fol. 765]

Afternoon Session

2:00 P. M.

Cross examination (continued).

By Mr. Gooch:

Q. General Walker, just before the noon recess we were discussing the various Court orders in connection with Meredith's entrance into the University of Mississippi, and you have testified concerning your knowledge of those. That was the substance of our interrogation and answers before the noon recess, was it not?

A. That I had general knowledge of them, yes, sir.

Mr. Gooch: We now offer in evidence, if the Court please, a certified copy of the Order vacating stay, recalling mandate, and issuing new mandate forthwith in the United States Court of Appeals for the Fifth Circuit, No. 19475, James H. Meredith, on behalf of himself and others simi-

larly situated, Appellant, versus Charles Dickson Fair, President of the Board of Trustees of the State Institutions of Higher Learning, et al., Appellees.

Mr. Watts: No objection.

The Court: That is Defendant's Exhibit 3?

Mr. Gooch: Yes, sir.

The Court: It is admitted.

[fol. 766] Mr. Gooch: At this time we would like to read a portion of it—it is all in, but I will read the injunction. This is an opinion by the Fifth Circuit Court of Appeals in New Orleans, dated the 27th day of July, 1962.

EXCERPTS FROM DEFENDANT'S EXHIBIT 3

"The case is reversed and remanded with directions to the District Court forthwith to grant all relief prayed for by the Plaintiff and to issue forthwith a permanent injunction against each and all of the Defendants-Appellees, their servants, agents, employees, successors and assigns, and all persons acting in concert with them, as well as any and all persons having knowledge of the decree, enjoining and compelling each and all of them to admit the Plaintiff-Appellant, James H. Meredith, to the University of Mississippi under his application heretofore filed, which are declared by us to be continuing applications. Such injunction shall in terms prevent and prohibit said Defendants-Appellees, or any of the classes of persons referred to from excluding the Plaintiff-Appellant from admission to continued attendance at the University of Mississippi. Pending such time as the District Court has issued and enforced the orders herein required and until such time as there have been full and actual compliance in good faith with [fol. 767] each and all of said orders by the actual admission of Plaintiff-Appellant to, and the continued attendance thereafter at the University of Mississippi, this Court herewith issues its own preliminary injunction enjoining and compelling each and all of said parties to admit Plaintiff-Appellant to, and allow his continual attendance at the University of Mississippi, further prohibiting and preventing

said parties, or any other of them, from excluding said Plaintiff-Appellant from attendance to and continued attendance thereafter on the same basis as other students at the University of Mississippi."

(Said Defendant's Exhibit 3 was marked by the Reporter.)

Mr. Gooch: We next offer in evidence the Opinion by Judge Hugo Black of the Supreme Court of the United States in the same captioned case as the previous number, filed September 12, 1962, in the Circuit Court at New Orleans; was entered the 10th day of September, 1962, in Washington.

(Conference at the bench, between Court and Counsel.)

(The instrument next above referred to was marked Defendant's Exhibit 4.)

DEFENDANT'S EXHIBIT 4

Mr. Gooch: The instrument is entitled "Supreme Court [fol. 768] of the United States, October Term, 1962, James H. Meredith versus Charles Dickson Fair, et al. Order. Upon consideration of the application of counsel for the movant and of the opposition of the respondents thereto, it is ordered that the orders of Circuit Judge Ben F. Cameron of the United States Court of Appeals for the Fifth Circuit of July 18, 1962, July 28, 1962, July 31, 1962, and August 6, 1962, purporting to stay the effectiveness of the mandate of the United States Court of Appeals for the Fifth Circuit, be, and the same are hereby, vacated and that the Judgment and Mandate of said Court shall be effective immediately.

Be it further ordered that the Respondents be, and they are hereby, enjoined from taking any steps to prevent enforcement of the United States Court of Appeals' Judgment and Mandate pending final action by this Court on the Petition for Writ of Certiorari now on the docket."

And that is signed by Hugo L. Black, Associate Justice of the Supreme Court of the United States, September 10, 1962.

[fol. 769] Mr. Gooch: Will you mark this, please, as Defendant's Exhibit 5.

(Thereupon, Defendant's Exhibit 5 was marked for identification.)

Mr. Gooch: For identification, this is the order—

Mr. Watts: No objection.

Mr. Gooch: —is the order signed by the United States District Judge, S. C. Mize, for the Southern District of Mississippi on September 13, 1962, following the two other instruments which have been introduced.

The Court: Have you offered it?

Mr. Gooch: I am about to offer it. I was identifying it. We now offer it in evidence.

The Court: Defendant's 5 is admitted.

Mr. Gooch: The same style and number of the case as previously indicated.

DEFENDANT'S EXHIBIT 5

"ORDER GRANTING PERMANENT INJUNCTION"

This matter is now before this Court by virtue of the Mandate of the United States Court of Appeals for the Fifth Circuit and the Mandate of Mr. Justice Black of September 10, 1962 setting aside all stays granted by Judge Ben F. Cameron and putting into effect the mandates of the Court of Appeals for the Fifth Circuit enjoining the Trustees and officials of the University of Mississippi from [fol. 770] taking any steps to prevent enforcement of the mandates of the Court of Appeals for the Fifth Circuit, and this Court having now considered the mandates of the Court of Appeals for the Fifth Circuit of July 17, 1962, July 27, 1962 and its final order of August 4, 1962, and this Court having considered the mandate of July 17, 1962, wherein

the Court of Appeals reversed the judgment of the District Court with directions to this Court to issue an injunction as prayed for in the complaint and by its mandate of July 27, 1962 ordered that the judgment of that Court issued as and for the mandate on July 17, 1962, be recalled and amended by making explicit the meaning that was implicit as expressed in its opinion dated June 25, 1962 and ordering that this Court "forthwith grant all relief prayed for by the plaintiff and to issue forthwith a permanent injunction against each and all of the defendants-appellees, their servants, agents, employees, successors and assigns, and all persons acting in concert with them, as well as any and all persons having knowledge of the decree, enjoining and compelling each and all of them to admit the plaintiff-appellant, James H. Meredith, to the University of Mississippi under his applications heretofore filed, which are declared by us to be continuing applications. Such injunction shall in terms prevent and prohibit said defendants-appellees, or any of the classes of persons referred to from excluding the [fol. 771] plaintiff-appellant from admission to continued attendance at the University of Mississippi.

And by its mandate of August 4, 1962 the Court of Appeals reaffirmed its orders of July 17, 1962 and July 27, 1962, in the following language: "All of our orders of July 17, July 27 and this date, therefore continue in full force and effect and require full and immediate obedience and compliance."

Now, therefore, it is here ordered, adjudged and decreed that the plaintiff, James Howard Meredith, be and he is hereby granted all the relief that is prayed for by him in his complaint and that the defendants, Charles Dickson Fair, President of the Board of Trustees of State Institutions of Higher Learning of the State of Mississippi, Louisville, Mississippi; Euclid Ray Jobe, Executive Secretary of the Board of Trustees of State Institutions of Higher Learning of the State of Mississippi, Jackson, Mississippi; Edgar Ray Izard, Hazlehurst, Mississippi; Leon Lowrey, Olive Branch, Mississippi; Ira Lamar Morgan, Oxford,

Mississippi; Malcolm Mette Roberts, Hattiesburg, Mississippi; William Orlando Stone, Jackson, Mississippi; S. R. Evans, Greenwood, Mississippi; Verner Smith Holmes, McComb, Mississippi; James Napoleon Lipscomb, Macon, Mississippi; Tally D. Riddell, Quitman, Mississippi; Harry Gordon Carpenter, Rolling Fork, Mississippi; Robert Bruce Smith, II, Ripley, Mississippi and Thomas Jefferson Tubb, [fol. 772] West Point, Mississippi, Members of the Board of Trustees of State Institutions of Higher Learning; James Davis Williams, Chancellor of the University of Mississippi, Oxford, Mississippi; Arthur Beverly Lewis, Dean of the College of Liberal Arts of the University of Mississippi, Oxford, Mississippi, and Robert Byron Ellis, Registrar of the University of Mississippi, Oxford, Mississippi, and each of them, their agents, servants, employees, successors, attorneys and all persons in active concert and participation with them be and they hereby are permanently restrained and enjoined.

13th of September, 1962.

Mr. Watts: Let's see that last document, please, sir. Thank you.

Mr. Gooch: Next one is a certified copy of the order of the Circuit Court, certified May 14,—

September 25, 1962, by the Circuit Court.

Mr. Andress: Is that a final order or is that still on appeal?

Mr. Gooch: As far as I know, it's a final order. I know nothing further about it.

Mark that as Defendant's Exhibit 6.

(Thereupon, Defendant's Exhibit No. 6, was marked for identification.)

Mr. Gooch: I say to you it has not so far been set aside, [fol. 773] Mr. Andress.

The Court: Are you offering 6?

Mr. Gooch: Yes, sir.

The Court: 6 is admitted.

Mr. Gooch: (Reading)